Appendix A
Ameritech's Response to
Specific Allegations

APPENDIX A
TO JOINT OPPOSITION AND REPLY
OF SBC AND AMERITECH

AMERITECH'S RESPONSE TO SPECIFIC ALLEGATIONS

1. Primary Interexchange Carrier ("PIC") Protection Program.

Certain commenters allege that Ameritech, with anti-competitive intent, refused to honor valid PIC change orders switching customers from Ameritech's intraLATA toll services to those of an interexchange carrier.[1]

Response: As the commenters, in particular MCI, are undoubtedly aware, this issue is currently the subject of proceedings before state commissions and state courts[2] and is not appropriate for consideration in the context of this merger.[3] Nevertheless, despite ongoing appeals of state commission orders, Ameritech has complied, and will continue to comply, with all final orders of state regulatory commissions concerning the PIC Protection Program. Ironically, some of these commenters (MCI, in particular) have been repeatedly accused of, and fined for,

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[1] See Mich. Consumer Fed. at 12 (alleging failure to accept customer requests in Michigan to switch carriers under guise of preventing slamming); Time Warner at 7-8 (noting Michigan and Illinois orders concerning Ameritech's PIC freeze practices); MCI at 5-6 (noting that three-way conference calls were mandated by state commissions in Michigan and Illinois to ensure that customers could change presubscribed toll carrier).

[2] See MCI Telecomms. Corp. v. Illinois Bell Tel. Co. d/b/a Ameritech Ill., Docket Nos. 96-0075, 96-0084, Order, 1996 Ill. PUC LEXIS 205 (Ill. CC Apr. 3, 1996); Sprint Communications Co. v. Ameritech Mich., Case No. U-11038, Opinion and Order, 171 P.U.R.4th 429 (Mich. P.S.C., Aug. 1, 1996); MCI Telecomms. Corp. v. Ameritech Mich., Case No. U-11550, 186 P.U.R.4th 4 (Mich. P.S.C., May 11, 1998).

[3] See Applications of NYNEX Corp. Transferor, and Bell Atlantic Corp. Transferee, For Consent to Transfer of Control of NYNEX Corp. and its Subsidiaries, 12 FCC Rcd 19985, para. 221 (1997) ("Bell Atlantic/NYNEX").

slamming.[4] Yet Ameritech never argued that MCI's slamming record should bar its merger with WorldCom instead of being dealt within the context of separate complaint proceedings.

Further, contrary to the allegations, the PIC Protection Program is not anti-competitive, but is a reasonable program to protect consumers from "slamming." The PIC Protection Program protects all providers of intraLATA toll and long distance service, not just Ameritech's intraLATA toll service, by preserving the customer's choice of carrier – regardless of the identity of that carrier – until the customer has authorized a change. Ameritech's PIC Protection Program is consistent with Section 258 of the Communications Act, which specifically provides that "[n]o telecommunications carrier shall . . . execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such certification procedures as the Commission shall prescribe." 47 U.S.C. § 258. The PIC Protection Program was designed to enable Ameritech to meet its statutory obligation to ensure that a change in a customer's intraLATA toll service or interLATA service provider has been properly authorized and to deal with the most frequent consumer complaint in America.[5] The PIC Protection Program simply

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[4] See, e.g., MCI Telecomms. Corp., 11 FCC Rcd 12630 (Com. Carr. Bur. 1996) (MCI consent decree to settle slamming complaints); AT&T Corp., 11 FCC Rcd 17312 (1996) (AT&T consent decree to settle slamming complaints), MCI Telecomms. Corp., Order Approving Offer of Settlement, Docket No. 971486-TI, 1998 WL 391679 (Fla. P.S.C. June 1, 1998) (noting receipt of total of 1,225 slamming complaints against MCI between April 1996 and January 1998); AT&T Communications of the Southern States, Inc., Docket No. 960626-TI, Order Approving Settlement Agreement, 1996 WL 678232 (Fla. P.S.C. Nov. 20, 1996) (noting 279 slamming complaints received against AT&T in 1996).

[5] See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecomms. Act of 1996, 12 FCC Rcd 10674, 10679-80 (1997) (noting that the number of slamming complaints received by the FCC in 1995 represents a six-fold increase from the number of such complaints in 1993); Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, FCC, 1998 WL 44862 (Feb. 1998) <http://www.fcc.gov/bureaus/common_carrier/reports/fcc-state_link/trends.html#trends> (recognizing slamming complaints as the largest percentage of complaints processed by the Consumer Protection Branch in 1996).

provided reasonable assurance that a change order was authorized by the customer and that the prescribed validation procedures had been followed by the interexchange carrier.

2. Michigan Specific.

A consumer interest group makes several allegations regarding Ameritech's behavior in Michigan. Specifically, the group alleges that: (i) Ameritech promised to create 150,000 jobs if a deregulation bill was passed, but instead slashed its land-line workforce by 22%; (ii) Ameritech published a false and misleading newspaper ad; and (iii) Ameritech promised to lower rates in Michigan, but instead rates have increased substantially and basic unlimited flat service rates have tripled.[6]

Response: As described in detail below, the allegations of this consumer group are simply not factually accurate. Moreover, the Michigan Public Service Commission ("MPSC") is the appropriate body to deal with intrastate service quality issues.[7] In addition, Ameritech's PIC Protection Program (see response in

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[6] Mich. Consumer Fed. at 8-12.

[7] See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecomms. Corp., Transferor, to SBC Communications, Inc., Transferee, CC Docket No. 98-25, Memorandum Opinion and Order, FCC 98-276, para. 43 (rel. Oct. 23, 1998) ("SNET"). This Michigan consumer group also makes a passing reference to the ongoing Indiana state regulatory proceeding concerning Ameritech Indiana's infrastructure expenditures to fulfill commitments made as part of the alternative regulatory plan proceeding, commonly referred to as Opportunity Indiana. See Mich. Consumer Fed. at 12-13. Opportunity Indiana is an ongoing state proceeding, and the Indiana Utility Regulatory Commission ("IURC") is the appropriate body to deal with the issue. See SNET, para. 43. Nonetheless, contrary to their allegations, as recently reported to the IURC, Ameritech Indiana has expended $79.4 million for the years 1994-1997 to provide digital switching and transport facilities, including where appropriate fiber optic facilities, to every interested school, hospital, and major government center in Ameritech Indiana's service area. See generally In the Matter of the Petition of Indiana Bell Tel. Co. Inc. d/b/a Ameritech Ind. for the Comm'n to Decline to Exercise in Whole or in Part Its Jurisdiction Over, and to Utilize Alternative Regulatory Procedures for,

Item 1 above) and rate issues have been the subject of proceedings before the MPSC[8] and are not appropriate for re-consideration in the context of this merger.[9]

Jobs. This claim is, at best, fanciful. As of December 31, 1997, Ameritech as a corporation had only 74,359 employees in all of its operations[10] and could never reasonably suggest that in Michigan alone it could create 150,000 jobs. Rather Ameritech promised to invest in infrastructure, which in turn would promote employment. Indeed, Ameritech's view that infrastructure investment promotes employment within the state of Michigan has proven true. This promise has been kept.

Disputed Newspaper Ad. To protect consumers from slamming, Ameritech Michigan had developed a program through which customers were able to protect

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Ameritech Ind.'s Provision of Retail and Carrier Access Servs. Pursuant to I.C. 8-1-2.6, Cause No. 40849, Response of Ameritech Indiana to June 16, 1998 Docket Entry, filed July 16, 1998.

8 See Re Ameritech Mich., Case No. U-11306, Opinion and Order, 1997 WL 235035 (Mich. P.S.C. Apr. 10, 1997); Re Ameritech Mich., Case Nos. U-11280, U-11281, U-11224, Opinion and Order, 1996 WL 766411 (Mich. P.S.C. Dec. 12, 1996).

9 See Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355 (1986) ("LA PUC II"); Bell Atlantic/NYNEX, para. 221.

10 See Ameritech 1997 Investor Fact Book (visited Nov. 10, 1998) <http://www.ameritech.com/investor/1997factbook/index.html>.

their choice of presubscribed long distance carriers to avoid "slamming." Under the "PIC Protection Program," a customer's primary interexchange carrier could be changed only through oral confirmation by the customer. (See Item 1 above.) The MPSC issued a ruling on May 11, 1998 requiring Ameritech Michigan to terminate its PIC Protection Program. The ruling was a response to a complaint filed by MCI, which as discussed above in Item 1 has a notorious "conviction" record on slamming.

On May 28, 1998 Ameritech Michigan placed full-page ads in several Michigan newspapers warning consumers of the increased danger of slamming following the termination of the PIC Protection Program. The ad also supported pending legislation that would permit slamming protection mechanisms such as the PIC Protection Program. The ad stated that as a result of the MPSC action, consumers could end up with phone service they did not choose and do not want and could pay significantly higher rates. The MPSC issued a press release declaring that this statement was completely untrue, defending its action and claiming that Ameritech Michigan had engaged in uncompetitive activities under the guise of preventing slamming.

Following the termination of the PIC Protection Program, as reported by Ameritech Michigan to the chairman of the MPSC, incidents of slamming increased in Michigan by over 75 percent – in one month – from 2,931 in May, 1998 to 5,207 in June.[11] The Michigan legislature recognized the increase in the slamming problem and quickly enacted anti-slamming legislation.

Rates. In its efforts to persuade the Michigan legislature to pass the Michigan Telecommunications Act ("MTA") in 1991, Ameritech argued that the state would be harmed by its existing archaic telecommunications laws and that basic telephone rates would not increase as a result of the MTA. Indeed, between the passage of the MTA and 1995, Ameritech introduced intrastate long distance price cuts and optional discount calling plans that saved consumers more than $300 million. The average rate Ameritech Michigan customers paid each month for basic residential service dropped from $9.00 in 1987 to $7.00 in 1993, when inflation is considered.[12]

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11 See letter dated July 21, 1998, from Robert N. Cooper, President, Ameritech Michigan, to John G. Strand, Chairman, MPSC.

12 Testimony of John M. Dempsey, Ameritech Assistant General Counsel, before a joint meeting of the Michigan Senate Technology and Energy Committee and the House Public Utilities Committee, June 7, 1995, citing a

Thereafter, the Michigan legislature modified the MTA to require Ameritech to set the price of basic local exchange service at or above the Total Service Long Run Incremental Cost in an effort to provide a level playing field for new competitors. This change in law dictated substantial rate restructuring and re-balancing. Certain of Ameritech Michigan's rates have fallen, while others have increased. Although the Michigan Consumer Federation is correct in stating that the rate for "unlimited" service has increased significantly, this statement is misleading because few residential customers need or choose an unlimited number of calls per month. Rather most residential customers subscribe to "Call Plans," which provide basic local exchange service with a specified number of call origination units for a flat rate with calls above that number being charged on a per call origination basis (e.g., Call Plan 50 and Call Plan 400). For example in 1998, only 0.9 percent of Ameritech's residential customers in Michigan have subscribed to the unlimited and extended calling plans. In contrast, 71.4 percent, have subscribed to Call Plan 400; 27.7 percent, to Call Plan 50. Most notably, Ameritech Michigan's overall local rates, remain 7 percent below the national average for touch tone service.[13]

3. General Allegations Concerning Service Quality – Michigan, Ohio.

Parties have made vague, unsupported allegations of poor service quality in Michigan and Ohio.[14]

Response: These vague allegations concerning Ameritech's service quality are wholly false. As demonstrated in the Affidavit of Wharton B. Rivers, Jr., President of Ameritech Network Services, filed with the Public Interest Statement, Ameritech has extensive procedures for assuring a level of service quality that meets or exceeds state requirements. Moreover, the state public utilities commissions have

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study performed by Western Michigan University.

[13] Comparison is based upon 1997 industry average rates from The Industry Analysis Division's Reference Book of Rates, Price Indices and Expenditures for Telephone Service (July 1998) <http://www.fcc.gov/ccb/stats> and 1997 Ameritech Michigan average tariffed rates for Detroit, Grand Rapids, and Saginaw, Michigan.

[14] See Mich. Consumer Fed. at 15; Consumer Coalition at 19-20; Edgemont Coalition at para. 5.

established service quality benchmarks for intrastate service where they deem it appropriate, and the state commissions are the appropriate forums for dealing with such issues.[15] Accordingly, these state issues are not appropriate for consideration by the FCC in the context of this merger application.[16]

4. Billing and Collection.

Pilgrim Telephone alleges that discontinuation of a billing and collection agreement demonstrates lack of good faith by Ameritech.[17] Similarly, JSM Telephage alleges that Ameritech has refused to provide it, as a CMRS provider, with desired interconnection.[18] While the allegations of JSM Telepage are vague and unclear, Ameritech believes that this allegation concerns Ameritech's September 1997 notification of its plan to withdraw the "reverse billing" option in Wisconsin.

Response: These frivolous allegations do not represent any violation of federal statute or regulation, nor do they raise any anticompetitive considerations. Accordingly, they should not be addressed in the context of this merger. Indeed, one of the specific complaints raised in the merger approval process is from a company complaining that Ameritech has refused to bill for dial-a-porn.[19] The proper forum for specific complaints against common carriers is a Section 208 complaint proceeding, not a license assignment/transfer of control proceeding.[20]

Pilgrim Telephone neglects to disclose that the billing and collection agreement between Ameritech and Pilgrim Telephone expired recently pursuant to its terms and that Pilgrim is essentially asking the FCC to ignore its own cramming

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15 See SNET, para. 43.

16 See LA PUC II.

17 See Pilgrim Tel. at 3-4.

18 See JSM at 1-3 (alleging refusal to provide CMRs provider with interconnection it desires).

19 See Pilgrim Tel. at 3-4.

20 See, e.g., Bell Atlantic Mobile Sys., Inc., 10 FCC Rcd 13368, 13380, para. 37 (1995).

guidelines. Specifically, Ameritech's concern about entering into a new agreement with Pilgrim Telephone stems from certain programs for which Pilgrim Telephone bills (e.g., dial-a-porn programs). Ameritech has established nondiscriminatory billing guidelines setting forth the types of programs for which Ameritech will bill. In general, Ameritech's billing guidelines specify Ameritech's policy that it will not bill for programs that may be objectionable to subscribers for reasons such as lewdness or excessive pricing.[21] Indeed, the FCC-endorsed Anti-Cramming Best Practices Guidelines specifically provide that local exchange carriers should screen products, services, and service providers prior to approval for inclusion on the telephone bill.[22]

Ameritech has no intention to stop providing billing services for third party carriers. Indeed, the 1996 Act requires a BOC to provide the same billing services provided to its interLATA affiliate on a nondiscriminatory basis to third party carriers.[23] Most notably, Pilgrim Telephone's allegations ignore that in 1986 the FCC de-tariffed, and virtually de-regulated, billing services after finding the service to be competitive.[24] Pilgrim Telephone in the context of this merger is simply asking the FCC to re-regulate billing services and to force Ameritech to bill for services

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21 Regarding Pilgrim Telephone's allegations that Ameritech has changed its policies to mirror those of SBC, Ameritech responds that it has had no conversations with SBC regarding the respective billing and collection policies of the companies. Ameritech, however, has been a leader in implementing tough anti-cramming practices and, in fact, recently participated in the FCC's Industry Workshop on Cramming.

22 See generally News Release, "FCC and Industry Announce Best Practices Guidelines To Protect Consumers from Cramming," July 22, 1998 <http://www.fcc.gov/bureaus/common_carrier/news_releases/1998/nrcc8050.html>. "Cramming" refers to the inclusion of unauthorized, misleading, or deceptive charges for products or services in end-user customers' local telephone bills.

23 See generally 47 U.S.C. § 271(c), (e).

24 See Detariffing of Billing and Collection Servs., 102 F.C.C.2d 1150 (1986), recon. denied, 1 FCC Rcd 445 (1986).

which customers find offensive and which historically have been the subject of cramming and excessive rates.[25]

Contrary to JSM Telepage's allegations, billing options are not a form of interconnection under either the 1996 Act or FCC orders. Nevertheless, Ameritech has provided JSM Telepage with an extended period of time (i.e., until March 31, 2000) within which to migrate from reverse billing. Further, Ameritech has been involved in active negotiations with JSM Telepage, which have included multiple traffic studies on alternative billing options. JSM Telepage, in stark contrast, has refused to enter formal negotiations with Ameritech even though its existing contract does not provide for reverse billing.

5. Reciprocal Compensation.

Certain CLECs have alleged falsely that Ameritech has refused to pay reciprocal compensation for local calls originated on Ameritech's network and ultimately terminated to Internet service providers ("ISPs").[26]

Response: These matters are currently the subject of proceedings before the FCC and state courts and commissions and thus are inappropriate for consideration in the context of this merger.[27]

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25 Even if Pilgrim Telephone's allegations were supportable, they would not provide a basis for denying this merger. See SNET, paras. 33-34.

26 See MCI at 4-5 (alleging that Ameritech has refused to pay reciprocal compensation for local calls originated on Ameritech's network and terminated to ISPs); Time Warner at 7 (alleging refusal to pay CLECs reciprocal compensation in Illinois, Michigan, Wisconsin, Indiana, and Ohio); AT&T at 18 (alleging Ameritech has ignored Michigan PSC orders to pay new entrants when they transport Ameritech traffic); see also e.spire at 15.

27 See Bell Atlantic/NYNEX, para. 221. Furthermore, even if the allegations were determined to be accurate, Ameritech's policy regarding the compensation of CLECs for certain types of calls would not provide a basis for the denial of this merger. See SNET, para. 34.

Moreover, contrary to the allegations, it is publicly known that Ameritech has paid CLECs reciprocal compensation on calls to ISPs who take local service from a CLEC in Illinois, Michigan, and Wisconsin, where it is required to do so by order of the state commissions.[28] In Ohio and Indiana, as even Time Warner acknowledges, final decisions regarding the issue of whether reciprocal compensation is owed on calls to CLECs' ISP customers have not been issued.[29] Accordingly, Ameritech is not currently paying reciprocal compensation for Internet-based calls to CLECs in Ohio and Indiana. Ameritech, however, is funding an escrow account for disputed amounts pending final determination of the issue in Ohio and Indiana.

Ameritech is continuing to pursue legal challenges of the Illinois, Michigan, and Wisconsin state commission orders based on the jurisdictional nature of the calls. As the FCC recognizes, the jurisdictional nature of Internet-bound traffic is an issue currently pending in a number of proceedings.[30] And, indeed, in its recently released GTE ADSL Decision, the FCC has indicated that Internet-bound traffic is interstate in nature.[31] Further, the FCC specifically declined to consider BellSouth's unwillingness to pay reciprocal compensation for traffic delivered to ISPs located within the same local calling area as the end user when assessing whether BellSouth satisfies the competitive checklist in Louisiana.[32] Similarly, in the context of this

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28 See Ameritech, BA Start Paying CLECs Local Compensation on ISP Calls in 14 States, State Telephone Regulation Report, Vol. 16, No. 21, Oct. 16, 1998, at 1.

29 See Time Warner at 7.

30 See Application of BellSouth Corp., BellSouth Telecomms., Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in La., CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, para. 303 (rel. Oct. 13, 1998) (FCC noting that the issue of a LEC's obligation to pay reciprocal compensation for traffic delivered to ISPs is pending in a number of proceedings).

31 See GTE Tel. Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, Memorandum Opinion and Order, FCC 98-292 (rel. Oct. 30, 1998) ("GTE ADSL Decision").

32 See Application of BellSouth Corp., Bellsouth Telecomms., Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in La., CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-

merger application, the FCC should not consider Ameritech's unwillingness to pay reciprocal compensation for ISP-bound traffic in those states where the regulatory commissions have not yet reached a final determination on the matter. When the issue has been finally resolved, Ameritech has moved quickly to settle on the amount due to the CLECs and to pay promptly the compensation owed. For periods of dispute, Ameritech has established and funded an escrow account for disputed reciprocal compensation amounts.

6. Annual Depreciation Charges.

The Michigan Consumer Federation appears to suggest that Ameritech is not making adequate capital expenditures in Michigan.[33]

Response: As a jurisdictional matter, state PUCs are solely responsible for and capable of dealing with intrastate service quality and rate-related issues, and thus such issues are inappropriate for consideration in the context of this merger.[34]

Contrary to the allegations, Ameritech's capital spending on average exceeds depreciation charges throughout Ameritech's region. In any given financial quarter, however, depreciation may exceed capital expenditures due to large capital expenditures made during the previous quarter, or to be made in a future quarter.[35]

271, para. 303 (rel. Oct. 13, 1998).

33 See Mich. Consumer Fed. at 13 (alleging that Ameritech took annual depreciation charges that exceeded total plant acquired in that year).

34 See LA PUC II; SNET, para. 43.

35 See Ameritech 1997 Annual Report to Shareholders (visited Nov. 10, 1998) <http://www.ameritech.com/investor/annuals/1997/aar001.html> (reporting capital expenditures of $2.651 billion and depreciation/amortization of goodwill expense of $2.521 billion); Ameritech 1998 News Release, "Ameritech Earnings Grew 12 Percent in Third Quarter as Gains in Data Services, European Investments Drive Record Results" (Oct. 15, 1998) <http://www.ameritech.com/media/releases/release_1644.html> (reporting, for 9 months ended Sept. 30, 1998, capital expenditures of $2.147 billion and deprecation/amortization of goodwill expense of $2.022 billion).

To the extent the Michigan Consumer Federation is indirectly complaining about Ameritech's infrastructure investment, its complaint lacks any merit whatsoever. In fact, no other carrier has made infrastructure investment of the level that Ameritech is making in Michigan. Specifically, as reported in ARMIS reports filed with the FCC, Ameritech Michigan has invested over $8.5 billion in building an advanced telecommunications infrastructure, and its network includes over 550,000 miles of fiber optic cable in Michigan. Overall Ameritech has increased its capital expenditures in its region from under $2 billion in 1994 to almost $3 billion in 1998 -- an approximately 50 percent increase. Moreover, as reported in its 1997 Annual Report to Shareholders, Ameritech continuously expands and upgrades its local phone network. In 1997, approximately $1.9 billion of total capital expenditures went toward the core phone network.

7. Shared Transport.

The large interexchange carriers allege that, in light of the decision by the United States Court of Appeals for the Eighth Circuit affirming the FCC's Shared Transport Order in CC Docket No. 96-98,[36] Ameritech's refusal to provide "shared transport" on an unbundled basis violates Section 251(c)(3).[37]

Response: As these commenters are well-aware, the issue of shared transport is currently the subject of judicial review[38] and, therefore, is not appropriate for consideration in the context of this merger application.[39] And, of course,

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[36] Implementation of the Local Competition Provisions in the Telecomms. Act of 1996, Third Order on Reconsideration, 12 FCC Rcd 12460 (1997) ("Shared Transport Order").

[37] See Sprint at 53; AT&T at 17; MCI at 4-5; see also Tex. Pub. Util. Counsel at 1.

[38] See Petition for Rehearing of Petitioners Ameritech Corp., the Southern New England Telephone Company, Southwestern Bell Telephone Co., and U S West, Inc., and Intervenors Bell Atlantic Telephone Companies, GTE Entities, and United States Telephone Association, Southwestern Bell Tel. Co. v. FCC, Nos. 97-3389/3576/3663/4106 (filed 8th Cir. Sept. 23, 1998).

[39] See SNET, para. 29.

Ameritech will comply with any final, non-appealable judicial order. On August 10, 1998, the United States Court of Appeals for the Eighth Circuit affirmed the FCC's Shared Transport Order.[40] At the same time, the Eighth Circuit reaffirmed its prior ruling of law that the Telecommunications Act of 1996 (the "1996 Act") prohibits the FCC from requiring "incumbent LECs to make available pre-combined packages of already assembled network elements (i.e., platforms)."[41] The Eighth Circuit in Southwestern Bell also concluded that "switching and transport are distinct network elements."[42]

Ameritech contends that Southwestern Bell overlooks a critical technical point: incumbent LECs cannot provide "shared transport" separately from local and tandem switching.[43] The functionality of "shared transport" can be made available only as part of a pre-assembled combination of distinct switching and transport elements that make up the incumbent LEC's network. The basis for Ameritech's rehearing petition is that "shared transport" – although comprised solely of interoffice transmission facilities – can be delivered only in combination with switching. Yet, as the Eighth Circuit previously has held, incumbent LECs are not required to provide such preassembled combinations of distinct network elements.[44]

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40 Southwestern Bell Tel. Co. v. FCC, 153 F.3d 597 (8th Cir. 1998).

41 Id. at 606.

42 Id. at 601.

43 See generally Ex Parte Filing Letter (CC Dkt Nos. 97-121, 97-137, 97-208, 97-231, and 96-98), dated Sept. 8, 1998, to Magalie Roman Salas, Secretary, FCC from Lynn S. Starr, Executive Director Federal Relations (attaching Section 271 Status Report, updated as of Sept. 3, 1998, which noted technical feasibility issues associated with providing shared transport unbundled from switching).

44 See Iowa Utilities Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997), cert. granted, 118 S. Ct. 879 (1998). The FCC, however, has appealed the Eighth Circuit's decision in Iowa Utilities Board which vacated the rule requiring the provision of existing preassembled combinations of network elements (the so-called "UNE Platform"). Briefing has been completed and the United States Supreme Court heard oral argument on October 13, 1998. Therefore, the underlying issue of whether existing combinations can be required consistent with the 1996 Act should be resolved by the Supreme Court in the

Incumbent LECs thus may not be forced to provide what the FCC refers to as "shared transport." Because Southwestern Bell appears to overlook this undisputed technical fact and, as a result, is inconsistent with Iowa Utilities Board, Ameritech has filed a petition for rehearing.[45] Contrary to AT&T's assertion, Ameritech's exercise of the procedural right to pursue appellate review in no way constitutes a "civil disobedience campaign"[46] – just as it is no such campaign when AT&T appeals FCC decisions. The FCC has long recognized that it cannot and should not sanction its regulatees for exercising the right to file pleadings, lobby, and take other actions before federal, state, and local governmental bodies.[47]

8. Universal Service.

Parties have alleged that Ameritech failed to carry out its commitment to provide and promote telephone lifeline services in Ohio and breached the Universal Service Assistance ("USA") Agreement made with consumer parties in that state in October 1997.[48]

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first half of 1999.

45 See Petition for Rehearing of Petitioners Ameritech Corp., the Southern New England Telephone Company, Southwestern Bell Telephone Co., and U S West, Inc., and Intervenors Bell Atlantic Telephone Companies, GTE Entities, and United States Telephone Association, Southwestern Bell Tel. Co. v. FCC, Nos. 97-3389/3576/3663/4106 (filed 8th Cir. Sept. 23, 1998).

46 See AT&T at 17.

47 See, e.g., Referral of Questions from General Communications, Inc. v. Alascom, Inc., 4 FCC Rcd 7447, 7450-51 (1988) (licensee did not abuse administrative process when it opposed or sought conditional grants of competitors' applications by raising legitimate public policy questions before the FCC); Application of United Transmission Inc. and United Tel. Co. of Mo., 67 F.C.C.2d 662, 671-75 (1978) (licensee's efforts to persuade local authorities in letters and other communications with city officials to grant a cable television franchise were a "legitimate attempt to induce government action, and to predicate sanctions thereupon would raise serious Constitutional questions").

48 See Parkview Areawide Seniors at Section 4 of Specific Comments; Edgemont Coalition, para. 4; Consumer Coalition at 24-25.

Response: This matter is currently pending before the Public Utility Commission of Ohio ("PUCO")[49] and should not be subject to review as part of this merger application.[50]

The allegation by Parkview Areawide Seniors that Ameritech has failed to provide lifeline services is simply false. Ameritech Ohio participates in both the federal and state programs designed to provide subsidized residential telephone service to low-income consumers. The federal Lifeline program currently provides eligible consumers a $5.25 per month credit. The federal Link Up program offers assistance valued at one-half of the applicable service charge for connection or $30, whichever is less. Ameritech Ohio's enrollment in its universal service programs currently is over 50,000 customers.

Ameritech Ohio's universal service program also includes commitments made in the USA Agreement, which was negotiated with input from consumer organizations as part of Ameritech Ohio's alternative regulation case. USA offers a second alternative subsidy of $10.20, which is available to anyone qualifying for the federal Lifeline or Link Up programs and is also available to participants in the Ohio Works First program and recipients of Disability Assistance who may not otherwise qualify for the federal assistance.

The issue of whether Ameritech is sufficiently publicizing the availability of the federal and state universal service subsidies is currently pending before, and should be resolved by, the PUCO.[51] In any event, Ameritech Ohio has more than

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[49] See In the Matter of the Application of Ameritech Ohio (Formerly Known as The Ohio Bell Tel. Co.) for Approval of an Alternative Form of Regulation, PUCO Case No. 93-487-TP-ALT, Entry (July 6, 1998). Similarly, as the Consumer Coalition recognizes (see Consumer Coalition at 31-32 & n.17), the issue of whether a late-payment charge represents a rate increase prohibited by the USA is currently pending before the PUCO. See In the Matter of the Application of Ameritech Ohio to Revise its Exchange and Network Services Tariff, P.U.C.O. No. 20, to Add Late Payment Charges for Residential Customers, PUCO Case No. 97-597-TP-UNC, Finding and Order, 1997 Ohio PUC LEXIS 1000 (Ohio PU.C. Dec. 23, 1997).

[50] See Bell Atlantic/NYNEX, para. 221; SNET, para. 43.

[51] See In the Matter of the Application of Ameritech Ohio (Formerly Known as

fulfilled its requirements to promote universal service offerings by, for example: promoting the USA program through annual mailings to more than 750,000 low-income residents, community outreach programs, and printing and distributing informational material. Ameritech Ohio has also sent annual bill page messages to every Ohio customer, attended conferences and meetings geared toward eligible customers, worked with other utilities to produce and publish a low-income support informational booklet, and installed and funded telephones located in the county offices of the state Department of Human Services that connect callers directly with Ameritech's USA information hot-line. Ameritech also funds a work group that handles only USA inquiries: Callers receive detailed information about available subsidies and eligibility requirements, and Ameritech pays for toll-free telephone service.

9. Lack of Parity/Performance Measures.

General Response: The allegations concerning lack of parity pertain directly to Ameritech's compliance with the Section 271 competitive checklist. The proper forum for any allegations regarding Ameritech's compliance (or lack thereof) with the competitive checklist is a BOC Section 271 Application proceeding, not a license transfer of control proceeding. Similarly, the proper forum for CoreComm's list of alleged service processing complaints is a contract enforcement proceeding, not a license assignment/transfer of control proceeding.[52] Nevertheless, set forth below are Ameritech's responses to the specific allegations concerning lack of parity.

A. CLECs have alleged that Ameritech lacks a high "flow through" rate (i.e., how long an order proceeds through processing without human intervention).[53]

The Ohio Bell Tel. Co.) for Approval of an Alternative Form of Regulation, PUCO Case No. 93-487-TP-ALT, Entry (July 6, 1998).

[52] See Bell Atlantic/NYNEX, para. 210 (concluding that review of performance measurement objectives is best addressed in ongoing rulemaking proceedings); see also Bell Atlantic Mobile Sys., 10 FCC Rcd at 13380, para. 37.

[53] See CoreComm at Attachment (alleging lengthy lag times in order processing/lack of adequate information regarding order processing and rejection of CLEC orders with conflicting explanations); see also Sprint at 54 (questioning Ameritech performance measures).

Response: These allegations are simply without merit. Ameritech maintains high flow through rates and has participated extensively in the FCC's ongoing proceeding on Performance Measures, CC Docket No. 98-56.[54] Moreover, Ameritech believes there are approximately 100 different measurements that are relevant to demonstrating both performance quality and parity. These measures cover the following categories of services: (1) pre-ordering and ordering processes and cycle time; (2) reliability and availability of Operations System Support ("OSS"); (3) resale performance; and (4) unbundled network element performance. Ameritech tracks its performance in each category on an individual carrier basis and makes industry average data, as applicable, available to each carrier in written reports that are discussed at service management meetings held on a regular basis. Parity comparisons with retail equivalents, where appropriate, are also provided to carriers.

Ameritech is also working diligently with the respective state commissions to develop and define comprehensive performance plans, which would include agreement on appropriate performance measurements, calculations of such measurements, standards for performance, and consequences of breach of such performance standards.[55]

B. CLECs allege that Ameritech has failed to provide enough measurements to determine nondiscriminatory treatment in access to Operations System Support ("OSS").[56]

Response: The FCC is currently examining what OSS measurements should be adopted in a separate proceeding and Ameritech has participated

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54 See generally Ameritech Comments, CC Docket No. 98-56, filed June 1, 1998; Ameritech Reply Comments, CC Docket No. 98-56, filed July 6, 1998.

55 See, e.g., Ex Parte Letter (CC Docket No. 98-56), dated Nov. 10, 1998, to Magalie Roman Salas, Secretary, FCC, from James K. Smith, Director, Federal Relations, Ameritech (attaching Ameritech's proposed performance plan filed with the Michigan Public Service Commission in MPSC Case No. U-11830 on Nov. 2, 1998).

56 See CoreComm at 3, Attachment; MCI at 4 (noting FCC Mich. Section 271 Order finding failure to provide nondiscriminatory access to OSS).

extensively in this proceeding.[57] Ameritech will comply with any rules ultimately adopted,[58] but the merger is not the appropriate forum within which to litigate this issue.[59]

Ameritech is currently furnishing access to its operational support systems to over 50 carriers in its five states. Ameritech has diligently resolved OSS issues previously identified by the FCC in the Michigan Section 271 Order.[60] The primary improvements have come as a result of three factors: (1) increased use of electronic interfaces by both Ameritech and, just as importantly, competing carriers; (2) additional carrier experience with the use of OSS services provided by Ameritech; and (3) new documentation, via a website, setting forth in detail the procedures for ordering and using OSS.

C. Some commenting parties have raised again concerns previously noted by the FCC in the Michigan Section 271 Order concerning access to 911/E911 databases.[61]

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57 See generally Ameritech Comments, CC Docket No. 98-56, filed June 1, 1998; Ameritech Reply Comments, CC Docket No. 98-56, filed July 6, 1998.

58 See In the Matter of Performance Measurements and Reporting Requirements for Operations Support Sys., Interconnection, and Operator Servs. and Directory Assistance, CC Docket No. 98-56, Notice of Proposed Rulemaking, 13 FCC Rcd 12817 (1998).

59 See Bell Atlantic/NYNEX, para. 210 (concluding that review of performance measurement objectives is best addressed in ongoing rulemaking proceedings).

60 Specifically, Ameritech provides access to OSS within substantially the same time and in the same manner as Ameritech provides the service to itself. Ameritech does not provide "firm order confirmation" to itself; the system either accepts or rejects the order. See Application of BellSouth Corp., BellSouth Telecomms, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in La., CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (rel. Oct. 13, 1998) (defining nondiscriminatory access to OSS as "substantially the same time and manner," and not "equal" to the RBOC itself).

61 See Mich. Consumer Fed. at 16 (alleging "sluggish" database performance in

Response: These parties are simply rehashing points previously raised in the context of a Section 271 application. As Ameritech recently reported to the FCC, reconciliation of the E911 databases in Michigan has been completed. Ameritech has committed to provide additional 911 performance reporting that it believes demonstrates that it meets the Section 251 nondiscriminatory access standard.[62]

10. Number Portability.

Time Warner alleges that Ameritech has failed to provide long term number portability in Ohio, Indiana, and Wisconsin. Time Warner further claims that Ameritech's method of processing orders for porting numbers has caused Time Warner's customers to suffer inconvenience and safety concerns.[63]

Response: The proper forum for specific complaints regarding long term number portability against common carriers is a Section 208 complaint proceeding, not a license assignment/transfer of control proceeding.[64] Time Warner's allegation against Ameritech's choice of local number portability ("LNP")-related technologies, network architecture, and processes is without merit because Ameritech's LNP technologies, architecture, and processes were developed and adopted by the Midwest Regional LNP Workshop and were approved by the FCC. To the extent Time Warner had legitimate concerns about these matters, Time Warner should have raised such concerns in the appropriate industry forums responsible for their development.

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911 service in Michigan); MCI at 4 (citing FCC Michigan Section 271 Order findings regarding nondiscriminatory access to 911/E911 services).

62 See Ex Parte Filing Letter (CC Docket Nos. 97-121, 97-137, 97-208, 97-231, and 96-98), dated Sept. 8, 1998, to Magalie Roman Salas, Secretary, FCC, from Lynn S. Starr, Executive Director Federal Relations (attaching Section 271 Status Report, updated as of Sept. 3, 1998).

63 See Time Warner at 5-6.

64 See, e.g., Bell Atlantic Mobile Sys., 10 FCC Rcd at 13380, para. 37.

While Ameritech's processing of some of the LNP orders for Time Warner's customers has not been flawless, Time Warner wholly fails to acknowledge that its own performance has contributed to the problems that it experienced. For example, Time Warner refused to accept order training offered by Ameritech for LNP, failed to follow ordering procedures, failed to attend regularly Ameritech's CLEC forums, and generally demonstrated an unwillingness to work cooperatively with Ameritech in coordinating cut-overs of LNP.

On September 30, 1998, executives from Ameritech and Time Warner met in Chicago to discuss informally how the business relationship between the companies could be improved. Following this meeting, Ameritech believed that some consensus had been reached on how the business relationship and LNP processes could be improved. Rather than continue to work cooperatively to resolve disputes, Time Warner has instead pursued a complaint with the state regulatory commission in Ohio in violation of the provision in the Time Warner Interconnection Agreement concerning alternative dispute resolution (Article XXXIV).[65]

11. IntraLATA Toll Dialing Parity.

AT&T alleges that Ameritech has refused to provide intraLATA toll dialing parity in Michigan notwithstanding a Michigan PSC order issued four years ago.[66]

Response: Intrastate policy issues, such as intraLATA toll dialing parity, are appropriately handled by state regulatory commissions and courts; such issues are inappropriate for consideration in the context of this merger.[67]

AT&T's allegation fails to reflect that the Michigan Court of Appeals reversed the Michigan PSC's orders requiring full implementation of intraLATA toll dialing parity prior to receipt of interLATA relief in Michigan.[68] In Michigan, in

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65 See In the Matter of the Complaint of Time Warner Telecom of Ohio, L.P. v. Ameritech Ohio, PUCO Case No. 98-1438-TP-CSS.

66 See AT&T at 18.

67 See LA PUC II; SNET, para. 43.

68 See Ameritech Mich. v. Michigan Pub. Serv. Comm'n, 583 N.W.2d 458, 468 (Mich. Ct. App. 1998), leave to appeal granted.

accordance with its statutory duty, Ameritech implemented toll dialing parity to 10 percent of its customers by January 1, 1996.[69] Further, despite the Michigan Court of Appeals decision that no further dialing parity implementation is required prior to interLATA relief, Ameritech has implemented dialing parity for 70 percent of its lines pursuant to an implementation plan filed with the Michigan PSC in November 1996.

12. Anti-competitive Behavior Related to Ameritech New Media.

Time Warner has alleged that Ameritech has used its control over telephone poles to discriminate in favor of its cable subsidiary and to subsidize video service offerings by distributing cash vouchers to Ameritech New Media new and potential cable subscribers.[70]

Response: The allegations concerning the AmeriChecks programs are currently the subject of judicial proceedings[71] and are inappropriate for consideration in the context of this merger.[72] Moreover, allegations against Ameritech New Media's past conduct do not materially weigh against the demonstrations that have been made that this merger serves the public interest.[73] Moreover, many of the allegations of Time Warner and the other cable monopolists reflect their use of the

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69 See Michigan Telecomms. Act, M.C.L. §§ 484.2312a and 484.2312b.

70 See Time Warner at 8; see also Mich. Consumer Fed. at n.16 (stating that Ameritech offered customers discounts redeemable toward telephone service).

71 See In re: The Complaint of the Michigan Cable Telecomms. Ass'n, et al. Against Ameritech for violation of the Mich. Telecomms. Act and an Application for Investigation under the Telecomms. Act and the Mich. Consumer Protection Act, MPSC Case No. U-11412, 183 P.U.R.4th 72 (Mich. P.S.C. 1997), appeal filed Ameritech Mich. v. Michigan Pub. Serv. Comm'n, Mich. Ct. App. Docket No. 209011; Ameritech Ohio v. Pub. Utils. Comm'n of Ohio, Ohio S. Ct. Case No. 97-1618, on appeal from Pub. Utils. Comm'n of Ohio Case No. 97-654-TP-CSS.

72 See Bell Atlantic/NYNEX, para. 221.

73 See SNET, para. 33.

regulatory process to attempt to ward off or hamstring effective competition from Ameritech New Media.

Ohio Pole Attachment Complaint. The Ohio Cable Telecommunications Association filed a complaint against Ameritech Ohio with the Public Utility Commission of Ohio ("PUCO") claiming that Ameritech Ohio had provided discriminatorily favorable pole attachments to Ameritech New Media in comparison with those provided to other cable operators in the state. The PUCO ultimately found that Ameritech Ohio had not provided proper notice of the change in pole attachment policy.[74] Ameritech Ohio has complied with the PUCO decision, including revising its policy with regard to notifications of changes in pole attachment policy.

AmeriChecks Program. As a cable overbuilder competing with incumbent monopoly cable operators, Ameritech New Media explored ways of promoting its cable service. Ameritech New Media developed a promotion through which it provided its subscribers with an AmeriCheck in the amount of $10 that could be used to pay for most Ameritech services, including Ameritech local phone, cable, or cellular bills. Ameritech New Media viewed its marketing program as the type of innovative, competitive marketing package that the 1996 Act was designed to encourage. These checks were paid for and forwarded by Ameritech New Media. The Michigan Cable Telecommunications Association filed a complaint with the MPSC alleging that the AmeriChecks program violated the Michigan Telecommunications Act because it amounted to the provision of basic local exchange service in combination with unregulated cable service at a price below the total service long run incremental costs in violation of Section 305(3) of the Michigan Telecommunications Act. The MPSC ultimately agreed. While Ameritech is in compliance with the MPSC order, Ameritech Michigan has filed an appeal of this decision which is currently pending before the Michigan Court of Appeals.[75]

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[74] See Ohio Cable Telecomm. Assoc. v. Ameritech Ohio, Case No. 96-1027-TP-CSS, Opinion and Order, 1997 WL 280132 (Ohio P.U.C. Apr. 17, 1997).

[75] See In re: The Complaint of the Michigan Cable Telecomms. Ass'n, et al. Against Ameritech Mich. for violation of the Mich. Telecomms. Act and an Application for Investigation under the Mich. Telecomms. Act and the Mich. Consumer Protection Act, MPSC Case No. U-11412, 183 P.U.R.4th 72 (Mich. P.S.C. 1997), appeal filed Ameritech Mich. v. Michigan Pub. Serv. Comm'n, Mich. Ct. App. Docket No. 209011.

The Ohio Cable Telecommunications Association filed a complaint with the PUCO alleging that Ameritech Ohio violated Sections 4905.33 and 4905.35 of the Ohio Revised Code by charging cable customers less than others and Section 254(k) of the Communications Act of 1934, as amended, by subsidizing its affiliate's cable service. The PUCO concluded that, through the use of AmeriChecks, cable subscribers were paying less for their phone service than nonsubscribers and that the program constituted illegal price discrimination. The PUCO ordered Ameritech Ohio to stop accepting AmeriChecks as payment for local phone service. While Ameritech is in compliance with the PUCO order, Ameritech Ohio has filed an appeal of the PUCO order which is currently pending before the Ohio Supreme Court.[76]

13. Compliance with Section 271 Competitive Checklist.

Several CLECs cite Ameritech's failure to receive Section 271 authorization as indicative of attempts to prevent local exchange competition.[77]

Response: The determination of whether the proposed merger is in the public interest should not be affected by whether the FCC has authorized Ameritech or SBC to provide in-region interLATA services. The fact that Ameritech, like the other BOCs, has not yet received in-region interLATA authorization in no way suggests that the merger does not serve the public interest, convenience, and necessity.[78]

Ameritech has made great strides in opening its local markets and fulfilling the requirements of Section 271. In response to the FCC's Michigan Section 271

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[76] Ameritech Ohio v. Pub. Utils. Comm'n of Ohio, Ohio S. Ct. Case No. 97-1618, on appeal from Pub. Utils. Comm'n of Ohio Case No. 97-654-TP-CSS.

[77] See Time Warner at 2, 4-5; Sprint at 53; e.spire at 16; see also Time Warner at 6 (alleging that Ameritech has failed to provide interconnection at least equal in quality to that provided to itself in Indiana); e.spire at 14-16 (claims Ameritech ignores its interconnection obligations until ordered by regulator or court).

[78] See Bell Atlantic/NYNEX, para. 203. See generally Joint Opposition of SBC Communications, Inc. and Ameritech Corp. to Petitions To Deny and Reply to Comments at Section III.D.2.

Order, Ameritech reviewed every "gap" identified by the FCC and has fixed all of the operational, OSS, or performance related issues identified. Indeed, in January 1997, Ameritech initiated a collaborative review with FCC staff to work on fixing the "gaps" identified by the FCC and on how to demonstrate Ameritech's implementation of those checklist items. This collaborative process has involved twelve different meetings with FCC staff through and including May 1998. In September 1998, Ameritech submitted a follow-up paper demonstrating why Ameritech believes that it is in compliance with the competitive checklist in Michigan.[79]

But for two legal issues currently pending in the appellate courts -- the UNE Platform, pending before the Supreme Court, and shared transport, pending before the United States Court of Appeals for the Eighth Circuit -- Ameritech stands prepared to file quickly an application for Section 271 authorization in Michigan. The absence of a recent Ameritech Section 271 filing reflects the realization that the most efficient course of action is to wait until the legal disputes are resolved. It is not an indication that Ameritech favors protection of its local markets rather than opening its local markets or that Ameritech does not intend to seek Section 271 authorization.

14. Qwest Teaming Arrangement.

Several commenters cite to the FCC's recent decision concerning Ameritech's teaming arrangement with Qwest as somehow demonstrative of an anticompetitive tendency by Ameritech.[80]

Response: As even the commenters seem to acknowledge, the Qwest business arrangement is being addressed in a separate proceeding, and thus this issue should not be re-litigated in the context of this merger.[81] The FCC's recent decision

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79 See Ex Parte Filing Letter (CC Dkt Nos. 97-121, 97-137, 97-208, 97-231, and 96-98), dated Sept. 8, 1998, to Magalie Roman Salas, Secretary, FCC from Lynn S. Starr, Executive Director Federal Relations (attaching Section 271 Status Report, updated as of Sept. 3, 1998).

80 See MCI at n.9; Pilgrim Tel. at 6 (citing Standstill Order, AT&T Corp. v. Ameritech Corp., File No. E-98-41, Memorandum Opinion and Order, 13 FCC Rcd 14508 (1998)).

81 See, e.g., Bell Atlantic/NYNEX, para. 221; Bell Atlantic Mobile Sys., 10 FCC Rcd at 13380, para. 37 ("the proper forum for specific complaints

requires Ameritech to cease marketing Qwest long distance service as part of its Complete Access Program, based on what Ameritech believes is an erroneous interpretation of Section 271 and the evidence before it, which resulted in the FCC's conclusion that Ameritech was "providing" in-region long distance service.[82] Ameritech also believes that the decision is unsound as a policy matter because it denies residential and small business consumers -- who are often overlooked by competitive carriers -- the choice and convenience afforded by a competitively priced package of local and long distance service on one single, convenient bill. Although Ameritech is appealing the decision, Ameritech is complying with the FCC's order.[83]

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against common carriers is a Section 208 complaint proceeding, not a license assignment/transfer of control proceeding"); In re McCaw and AT&T, 9 FCC Rcd 5836, 5919-20 (1994) ("formal complaint proceedings are a more appropriate forum"), aff'd sub nom. SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995).

82 See AT&T Corp. v. Ameritech, Memorandum Opinion and Order, FCC 98-242 (adopted Sept. 28, 1998) (concluding that business arrangement with Qwest violates Section 271, but specifically declining to determine whether arrangement violates equal access obligations under Section 251(g)).

83 Ameritech Corp. v. FCC, Case No. 98-1471 (filed D.C. Cir. Oct. 13, 1998).

Appendix B
SBC's Response to
Specific Allegations

Appendix B
TO JOINT OPPOSITION AND
REPLY OF SBC AND AMERITECH

SBC'S RESPONSE TO SPECIFIC ALLEGATIONS

This appendix responds to allegations regarding SBC's conduct which have been made by the commenters and petitioners. As we show, these charges are either without factual basis or are pending in other proceedings before the Commission or in other forums. In many cases, the opponents of the merger cite to disputes over which there are legitimate differences of opinion or claim to report as facts matters that are merely alleged in other proceedings. None of the allegations bear on the issues relevant to the Commission's analysis of this merger.

Section 1 of this appendix addresses the specific allegations relating to compliance with Section 251 — many of which are currently the subject of other pending proceedings and thus play no part in the Commission's merger analysis — and we show they all are either meritless or the subject of legitimate disputes. Section 2 discusses the allegation that SBC has failed to comply with Section 271 — an issue that the Commission has held is not relevant in a merger case — and we show that SBC has proceeded in good faith to open its markets to competition. Section 3 demonstrates that the allegation that SBC is difficult in negotiations is merely an attempt to gain leverage from this Commission in ordinary commercial disputes that are subject to arbitration and/or regulatory oversight. Section 4 shows that the suggestion that SBC is overly litigious is nothing more than an effort to penalize SBC for exercising its rights to question the legality of regulatory decisions and legislative actions. Finally, Section 5 will address various miscellaneous allegations that attempt to cast doubt on SBC's character and fitness and we demonstrate that these attacks are unreasonable and baseless.

1. SECTION 251 COMPLAINTS

The vast majority of matters noted in the petitions and comments are complaints raised by SBC's competitors that are already being addressed by the Commission, state public utility commissions, and/or the federal or state courts. These allegations are nothing more than an attempt to use the merger review process improperly to obtain concessions in unrelated proceedings.[1] The Commission has refused to consider such allegations in prior merger cases and should do so again. As the Commission stated only last month in the SBC/SNET Order: "The Commission has regularly declined to consider in merger proceedings matters that are the

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[1] See, e.g., United States v. FCC, 652 F.2d 72, 91 (D.C. Cir. 1980) ("Although evidentiary hearings and other procedural devices are useful and sometimes indispensable they may also be exploited for unworthy purposes.").

subject of other proceedings before the Commission because the public interest would be better served by addressing the matter in the broader proceeding of general applicability."[2]

Nondiscriminatory Interconnection

Several commenters claim that PacBell has not offered paging companies interconnection terms and conditions that it has offered to others. [3]

Response: This claim relates to a good faith dispute as to how the most favored nation or "me-too" provision of Section 252(i) applies. The essence of the disagreement is whether a carrier that elects a "me-too" agreement is entitled to the terms of another agreement for the same number of years as the initial agreement or whether the carrier is only entitled to the "me-too" terms for the remainder of the initial agreement. The issue is currently pending in federal court,[4] before the FCC[5] and before the California PUC.[6] The parties have briefed the issue, as requested by the California PUC, and expect a decision shortly.[7]

Performance Measures

The Consumer Federation alleges that SBC does not provide individual performance measures for service to CLECs and SBWT subsidiaries and that SBC has not achieved parity

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[2] SBC/SNET ¶ 29 (refusing to address OmniPoint's argument with SBC concerning billing and collection services to support a calling party pays service). See also SBC/Telesis ¶ 38 (refusing to consider various conduct allegations, preferring to rely on "the specific enforcement tools that Congress has given [the Commission] in the Communications Act . . . [and] the comparable tools that the [state utility commissions] have at their disposal to protect their ratepayers from unlawful anti-competitive abuses"); BA/NYNEX ¶ 210 (concluding that review of performance measurement objectives is best addressed in ongoing rulemaking proceedings); AT&T/McCaw ¶ 70 (refusing to impose equal access requirements and nondiscriminatory billing and collection procedures as a condition of the merger as these were the subject of another proceeding).

[3] Focal Communications at 6; Level 3 Communications at 22; Hyperion Telecomm. at 21-22; KMC Telecom at 17.

[4] Airtouch Paging of California v. Pacific Bell, No. C 98-2216 MHP (N.D. Cal. filed May 29, 1998).

[5] In re Requests for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers, CCB/CPD 97-24 (filed Apr. 25, 1997).

[6] In re Pacific Bell (U 1001 C) and Pacific Bell Communications Notice of Intent to File Section 271 Application for InterLATA Authority in California, Docket Nos. R.34-04-003 et al., Final Staff Report at 90-92 (Cal. Pub. Util. Comm'n Oct. 5, 1998). (These proceedings have been consolidated and will be collectively referred to as the "PacBell Draft 271 Proceedings.)

[7] This is not the only proceeding in which this issue has been raised inappropriately. The paging carriers raised their complaints in PacBell's Draft 271 Proceeding, rather than by arbitration as required by § 252(b).

between service to CLECs and to SBC's retail customers and is not subject to penalties for these alleged deficiencies.[8]

Response: The adequacy of the performance measures is being addressed in pending Section 271 proceedings, is the subject of ongoing collaborative processes with state public utility commissions and is the subject of an outstanding FCC rulemaking.[9] It should be resolved in those proceedings, not here.

In all events, the allegations are wrong. SBC has been providing each CLEC its individualized performance measures and those data demonstrate that SBC has been achieving parity in its service to CLECs and its own retail customers. SBC has also been working with the FCC, DOJ and the state commissions to provide additional performance measures to meet the needs of these regulatory bodies and CLECs. In particular:

- SBC began working with DOJ in July, 1997, to develop a set of performance measurements that would allow DOJ to evaluate SWBT's compliance with the 1996 Act. DOJ concluded this list would satisfy the performance measure criteria of Section 271.[10] This list of 66 measurements was filed in SWBT's 271 applications in Texas, Oklahoma, Kansas and Arkansas.

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[8] Consumer Federation of America/Consumers Union at 12. The Consumer Federation purports to list "specific acts and policies . . . where SBC fails to meet requirements for entry into region long distance." Id. at 11-13. This list includes, for example, "violations of court rulings" without including the rulings to which it refers. Id. at 11. Many of the allegations reportedly occur in "all" SBC states. "All" is defined, however, to "mean[] that the issue has arisen in California and at least one other SBC state and has been raised by at least three companies." Id. at 13. These allegations clearly fail to meet the standards of Section 309 of the Act for petitions: they do not "contain specific allegations of fact sufficient to show that the petitioner is a party in interest," and they are not supported by affidavits of persons with personal knowledge. 47 U.S.C. § 309(d)(i). The Commission accordingly should dismiss the complete list of claims the Consumer Federation compiled in its comments. SBC has endeavored to address the allegations as it understands them, and will show in any event that they are as baseless as they are vague.

[9] See, e.g., Order Instituting Investigation on the Commission's Own Motion Into Monitoring, Performance of Operations Support Systems, PacBell's Draft 271 Proceeding; In re Performance Measurements and Reporting Requirements for Operation Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, 13 FCC Rcd. 12817 (1998).

[10] In March of 1998, Donald J. Russell, Chief of the DOJ Telecommunications Taskforce, sent a letter to Liam S. Coonan, Esq., Senior Vice President and Assistant General Counsel for SBC Communications, which included a list of performance measures. It also stated, "we are satisfied that the performance measures listed in Attachment A, to which SBC has agreed, would be sufficient, if properly implemented, to satisfy the Department's need for performance measures for evaluating a Section 271 application filed in the not-too-distant future." Letter from Donald

Footnote continued on next page

- SWBT has added over 30 additional performance measurements beyond those originally proposed by DOJ as a result of the collaborative process in Texas and to address concerns of the CLEC Facility Based Coalition.[11]

- PacBell and the CLECs have negotiated a set of 41 performance measures, with multiple levels of disaggregation as appropriate, that cover all aspects of PacBell's relationship with CLECs.[12]

- Data filed with DOJ and the FCC show that, for most of the measurements, SWBT is providing CLECs with service that is at least on par with the individual service provided to SWBT's retail customers. Due to random variation, all measurements will not be in parity every month. However, when SWBT's performance data is viewed collectively, the performance provided to CLECs is in parity with that SWBT provides to its retail customers.

- SBC's interconnection agreements also contain performance measures, and SBC is subject to liquidated damages in the event SBC fails to achieve them.[13] In addition, PacTel has proposed self-executing liquidated damages provisions in OSS OII.[14]

Operation Support Systems

A number of the commenters make a variety of allegations concerning the adequacy of SBC's OSS, including claims regarding: (1) SBC's OSS parity with respect to resale and UNEs,[15] (2) SBC's use of manual OSS,[16] and (3) SBC's alleged backtracking from agreements

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Footnote continued from previous page
J. Russell, Chief, Department of Justice Telecommunications Task Force, to Liam S. Coonan, Assistant General Counsel, SBC Communications Inc. (March 6, 1998) (regarding SBC performance measures) (Exhibit 1 to this Appendix).

[11] Letter from Christian A. Bourgeacq, Senior Counsel, Southwestern Bell Telephone Co., to Administrative Law Judge Katherine D. Farroba, Public Utility Commission of Texas (Oct. 31, 1998) (regarding Project No. 16251 — Section 271 Collaborative Process; Performance Measures Follow-Up Information).

[12] PacBell Draft 271 Proceeding, Final Staff Report at 58; SBC Communications Inc., Pacific Bell, and Pacific Bell Communications, Affidavit of Gwen S. Johnson, PacBell's Draft 271 Proceeding, ¶¶ 6 (Cal. Pub. Util. Comm'n filed March 31, 1998) ("Johnson Aff.").

[13] Johnson Aff. ¶¶ 7-8.

[14] Id. at 7.

[15] Consumer Federation of America/Consumers Union at 12-14; Hyperion Telecomm. at 21.

[16] Sprint, Brauer Aff. at 18-19.

between PacBell and AT&T on OSS interfaces.[17] They also allege that the California PUC is concerned about some of the OSS provisions in PacBell's interconnection agreements.[18]

Response: None of the claims has any basis. First, SWBT does provide OSS parity with respect to resale and UNEs. In fact, it has been praised by state public utility commissions for its progress in this area.[19] Notwithstanding the achievements to date, SBC is continually working to improve its OSS.[20]

With the exception of proprietary marketing information, SBC makes available to CLECs the exact interfaces that SBC's retail operations use for Pre-Ordering and Ordering, including Consumer/Business EASE, Starwriter, and SORD.[21] SBC has gone beyond parity, providing

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[17] AT&T at 20-21, Blitch Aff. ¶¶ 18-20.

[18] Focal Communications at 5-6; Hyperion Telecomm. at 20-21; Level 3 Communications at 21.

[19] For example, at the July Open Meeting of the Texas PUC, Commissioner Walsh stated that she believed "that in terms of setting up procedures to handle . . . CLECs' orders and also how far [SBC is] along on the OSS, [SBC] may be further along than anybody." Meeting of the Texas Public Utility Commission, In re Project 16251 – Investigation into Southwestern Bell Telephone Company's Entry into the InterLATA Telecommunications Market in Texas, July 22, 1998, transcript of agenda item no. 17 at 4. Additionally, Administrative Law Judge Robert E. Goldfield of the Oklahoma PUD recently found that with regard to SWBT's provision of OSS: "Many of the problems incurred by the CLECs are the result, in part, of the CLECs themselves not having the technical capabilities and expertise to make these systems fully operational." Oral Readout of Findings in Southwestern Bell Telephone Company's 271 Proceeding, Docket No. PUD 96000560 at 1 (July 2, 1998).

[20] See Collaborative Process Affidavit of Elizabeth A. Ham on Behalf of Southwestern Bell Telephone Co., In re Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, at ¶¶ 4, 11 (Tex. Pub. Util. Comm'n filed July 3, 1998) ("Ham Aff."). As the Commission has recognized, complying with OSS requirements of Section 251 is one of the more difficult requirements imposed on ILECs. See, e.g., In re Performance Measurements and Reporting Requirements for Operator Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, 13 FCC Rcd. 12817, ¶ 14 (Apr. 17, 1998).

[21] Johnson Aff.¶ 15; Collaborative Process Rebuttal Affidavit of Elizabeth A. Ham on Behalf of Southwestern Bell Telephone Co., In re Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, ¶¶ 6, 25, 28 (filed July 20, 1998) ("Ham Rebuttal Aff."); SBC Communications Inc., Pacific Bell, and Pacific Bell Communications, Affidavit of Christopher J. Viveros, PacBell's Draft 271 Proceeding, ¶¶ 28, 30 (Cal. Pub. Util. Comm'n filed March 31, 1998) ("Viveros Aff.").

additional interfaces that SBC does not use internally for its own retail business for Pre-Ordering, Ordering/Provisioning, Repair & Maintenance and Billing.[22]

Second, the claims about PacBell's manual ordering process are ancient history. In late 1996 and early 1997, PacBell's OSS were manually intensive. While this caused delays and errors, these problems were solved and PacBell has not had a backlog since June 1997. In fact, in September 1997, the California PUC rejected complaints filed by Sprint and others that PacBell had failed to fill CLEC orders in a timely manner.[23] There are also no known current problems with lost, delayed or erroneous rejections of orders. PacBell offers multiple preordering and ordering interfaces that permit the CLECs to submit orders for resale without manual intervention from PacBell.[24] PacBell is ready to process the CLEC's orders in mass volumes,[25] but the CLECs have not built their side of the OSS facility.[26]

Third, SBC did not backtrack from any agreements between AT&T and PacBell on OSS interfaces after the merger, as AT&T alleges. PacBell made the decision to release an upgrade to its RMI platform, an OSS platform for submitting electronic orders, in order to increase flow-through resale orders. This decision, and the necessary system work, was begun in 1996 and substantially completed by PacBell before the merger with SBC.[27] Ironically, while filing complaints in this proceeding, AT&T has praised SWBT's OSS development before at least one state utility commissioner.[28]

Finally, the California PUC never expressed any concerns about the OSS provisions of PacBell's interconnection agreements. The claims relate to disagreements between PacBell and several CLECs as to: (1) language requiring CLECs to sign a statement that PacBell "provides nondiscriminatory access to its OSS interfaces," (2) PacBell not providing CLECs access to customer service records until after the customer has agreed to switch carriers, and (3) PacBell

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[22] Ham Aff. ¶ 5, 6, 9; Viveros Aff. ¶¶ 28, 40, 76, 92.

[23] See MCI Telecomm. Corp. v. Pacific Bell, Decision No. D.97-09-113, Case Nos. 96-12-026, 96-12-044, 97-01-021 WL 868373 (Cal. Pub. Util. Comm'n Sept. 24, 1997). Cal Tech International Telecom filed a similar lawsuit in the Northern District of California against SBC. Cal Tech International at 1. SBC believes the judge will find as the MCI court did that "[w]hile competitors' suspicions are rife, there is simply no substantial evidence on the record that the delays encountered in the Pacific Bell Center are more than what Pacific Bell claims they are — startup problems inevitable for this transition from monopoly to competitive service." Id. at *9.

[24] Viveros Aff. ¶ 40.

[25] Id. at ¶¶ 22, 23, 56.

[26] Id. at ¶¶ 86-87.

[27] Id. at ¶¶ 63-67.

[28] See Letter from Jack R. Goldberg, Connecticut Department of Public Utility Control, to Paul K. Mancini, Assistant General Counsel, SBC Communications Inc. (May 26, 1998) ("AT&T remarked about the unprecedented support provided by SBC to AT&T in Texas.") (Exhibit 2 to this Appendix).

reserving the right to discontinue or modify use of any OSS interface with 90 days' written notice. The second claim remains in dispute and will be resolved by the California PUC in PacBell's Draft 271 Application. The first and third claims have been settled, subject to the California PUC's approval, in connection with PacBell's Draft 271 application.[29]

Collocation

The allegations concerning collocation issues address two issues: the availability of space, and pricing. As is the case of other complaints, the claims mischaracterize proceedings before state commissions and improperly seek to exploit legitimate disagreements over the interpretation of Section 251.

Space: The claims with respect to space include the allegations that: (1) the California and Texas PUCs have noted deficiencies in SBC's provision of collocation space to competitors;[30] (2) that SWBT refused to provide physical collocation space to TCG and other CLECs in a timely manner;[31] (3) that SWBT locates its own Point of Termination ("POT") frames and associated equipment in the collocation space, thereby reducing space available to its competitors;[32] and that (4) PacBell refused to make collocation space available until Commission action was threatened.[33] In addition, Sprint alleges that PacBell improperly denied Covad physical collocation in a number of end offices.[34]

Response: Each of these claims is baseless. First, neither the California PUC nor the Texas PUC has noted any deficiencies in SBC's collocation arrangements. The staff of the California PUC has made several "[r]ecommendations" relating to collocation in connection with the ongoing PUC-managed Section 271 collaborative process.[35] With one exception,[36] PacBell

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[29] Appendix OSS — Resale and UNE, Prepared for PacBell's 271 Workshop at ¶ 1.8 (Exhibit 3 to this Appendix).

[30] Focal Communications at 5; Hyperion Telecomm. at 20; KMC Telecom at 15-16; Level 3 Communications at 14, 19-21, Schuh Aff. ¶¶ 3-6, 9.

[31] AT&T, Washington Aff. ¶ 6.

[32] Sprint, Brauer Aff. at 10; but see Sprint, Farell/Mitchell Aff. at 19 ("SBC permits CLECs to share collocation space instead of requiring each CLEC to occupy a dedicated cage.").

[33] Sprint, Brauer Aff. at 15.

[34] Sprint, Katz/Salop Aff. ¶ 25 & nn.18-19.

[35] See PacBell Draft 271 Final Staff Report at 70. AT&T's complaint about NXX codes is similarly overstated. AT&T at 21. PacBell's provisioning of NXX codes is the subject of a PUC staff recommendation as part of the 271 proceeding.

[36] This one exception is related to cageless collocation. PacBell did not agree to provide cageless due to security concerns for itself, its network and third parties. Declaration of Sandra Faulkender in Support of Defendant Pacific Bell's Opposition to Application for Preliminary

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has agreed to implement all of the recommendations with only minor modifications.[37] The Texas PUC has not cited SWBT for deficiencies with its provision of collocation, but — like the California PUC — has made a variety of recommendations pertaining to collocation in the context of its Section 271 collaborative process.[38] SWBT is responding to these recommendations.

Second, most of AT&T's allegations concerning TCG relate to events prior to the 1996 Act, when physical collocation was not required.[39] Under the decision in Bell Atlantic v. FCC, ILECs were only required to provide virtual collocation, which SWBT provided to TCG. Any allegations relating to difficulties in obtaining physical collocation from this period are simply not relevant.

The alleged collocation difficulties that have occurred since passage of the 1996 Act have been largely due to lapses on the part of TCG, not SBC, or to requests by TCG for information from SWBT before SWBT could deliver reliable data.[40] While AT&T has accused SBC of being difficult to deal with on collocation matters, most of the problems have stemmed from TCG's failure to meet deadlines or to provide equipment; the submission of incomplete, unclear or incorrect applications for physical collocation; changes in its requirements on short notice or failure to adhere to the terms of SWBT's collocation tariff. Nonetheless, SWBT has attempted to accommodate TCG and to provide collocation on a timely basis.[41] TCG's complaint that

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Injunction, Ex. 8, Covad Communications Co. v. Pacific Bell, No. C 98-1887 SI ¶¶ 8, 10-11 (N.D. Cal. filed July 7, 1998) ("Faulkender Decl.").

[37] See PacBell Draft 271 Reply Comments, app. 1 at 2-3, app. 2 at 3-4.

[38] See In re Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Commission Recommendation at 4, Project No. 16251 (Tex. Pub. Util. Comm'n June 1, 1998).

[39] Bell Atlantic Tel. Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) (vacating the parts of the FCC's Special Access Expanded Interconnection Order requiring physical collocation).

[40] While TCG also asserts that SWBT waits "until the end of the construction interval to raise problems," it did not provide any specific example of SWBT's alleged delays. AT&T, Washington Aff. ¶ 21. As a result, it is difficult to respond to the charge. To the best of SBC's knowledge, SWBT has notified TCG of problems in meeting a construction deadline in a timely fashion.

[41] For example in early 1998, TCG placed orders for collocation cages in a number of SWBT central offices in the Dallas/Fort Worth area. Construction was delayed when TCG did not return design drawings in a timely manner, but returned them a month after the scheduled date. See Letter from H. Glen Hutchins, Account Manager – Competitive Provider Account Team, Southwestern Bell Company to Teleport Communications Group at 2 (August 7, 1998) (Exhibit 4 to this Appendix.) That caused a delay in completing construction. During the Spring and Summer, TCG submitted between four and six design changes for each of the collocation sites, including a request to increase the number of POT frames. The POT changes required a complete redesign of the collocation space and were typically submitted only four weeks before

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"SWBT refuses to provide pertinent termination frame address information in a timely manner"[42] ignores the fact that SWBT does not know this information with certainty until all the necessary equipment has been installed. SWBT does, however, provide TCG the information requested, subject to appropriate disclaimers as to its reliability.[43]

Third, Sprint's claim that SWBT is acting unreasonably in requiring, alone among the RBOCs, that the POT frame and associated equipment be situated in the collocation space[44] is unsupportable. First, this is not true in Texas. The Texas tariff provides that SWBT will place the POT frame outside the cage if the CLEC so desires.[45] In SWBT's other states, its current practice is to place the POT frame inside the cage in order to use the available space most efficiently to accommodate the maximum number of collocators.[46]

Fourth, Sprint's allegation[47] that PacBell refused to make collocation space available until "commission action was threatened" is absurd. PacBell has provisioned over 658 physical collocation cages in 196 wire centers with hundreds more under construction.[48] Rather than acting under the threat of CPUC action, PacBell voluntarily went to the CPUC last winter to obtain its consent for creative methods of expanding collocation opportunities in the face of a 400 percent increase in requests. As a result, PacBell has devoted extensive resources to

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the scheduled completion of construction date. Under SWBT's tariff, it was entitled to an additional 60 days to complete construction for the substantial design changed. See SWBT Local Access Service Tariff, Physical Collocation (Regulation), § 6.1.2 (issued Sept. 10, 1998). However, contrary to TCG's charges, SWBT completed construction on the scheduled completion date of September 4, 1998. See, e.g., Physical Collocation Job Completion Notices. (Exhibit 5 to this Appendix).

[42] AT&T, Washington Aff. ¶ 23.

[43] See, e.g., E-mail from H. Glen Hutchins, Account Manager — SWBT Competitive Provider Team to Keith Schemp, AT&T Local Services (Aug. 1, 1998) (Exhibit 6 to this Appendix.)

[44] Sprint, Brauer Aff. at 10; but see Sprint, Farrell/Mitchell Aff. at 19 ("SBC permits CLECs to share collocation space instead of requiring each CLEC to occupy a dedicated cage.").

[45] Southwestern Bell Telephone Co., Texas Local Access Service Tariff, Physical Collocation (Regulations) § 8.2.

[46] Level 3 objects to PacBell's allocation of newly available collocation space when CLECs were previously denied space. Level 3 Communications, Schuh Aff. ¶ 6. PacBell allocates any newly available collocation space in the manner and on the timetable directed by the CPUC. See Letter from Collocation Services, Pacific Bell, to Janet O'Brien, Covad Communications (May 14, 1998) & Letter from Jack Leutza, Director, Telecommunications Division, California Public Utilities Commission, to William A. Blase, Jr., Vice President-Regulatory, Pacific Bell (April 30, 1998) (attached as Exhibits to Faulkender Decl.).

[47] Sprint, Brauer Aff. at 15.

[48] See Gilbert/Harris Reply Aff. ¶ 68.

surveying its central offices to determine whether space for physical collocation is available and makes every attempt to create collocation space, for example, by removing non-functioning equipment and relocating administrative offices. By making these changes, PacBell was able to create additional space over 50 central offices that originally had no available physical collocation space.[49]

Finally, Sprint's assertion that PacBell improperly denied Covad Communications physical collocation in a number of end offices is the subject of ongoing litigation in the Northern District of California and, pursuant to Commission precedent, the Commission should not attempt to resolve the matter here.[50]

The gravamen of Covad's claims is that PacBell found room for its own DSL equipment in some 20 PacBell end offices after PacBell advised Covad that there was no space to collocate Covad's equipment in those offices.[51] However, DSL equipment does not require the same amount of space that is necessary to set up, install and maintain a secure area for collocation. Pursuant to its California collocation tariff, PacBell looks for a minimum of 100 square feet to accommodate physical collocation,[52] while its own transmission equipment, including its DSL equipment, is dispersed throughout the existing area in the central offices. Contrary to Covad's implication, the placement of PacBell's DSL equipment did not cause or play any role in determining whether space was or was not available for Covad or other CLECs requesting physical collocation.[53] Further, Covad has always had the option of virtual collocation. Indeed, the District Court denied Covad's motion for a preliminary injunction in part on the grounds that virtual collocation was a "workable alternative[]" to physical collocation.[54]

Pricing:

AT&T raises three claims with respect to collocation pricing. First, it alleges that the collocation rates charged by SWBT are inconsistent with the Act because prices are "patently

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[49] Faulkender Decl. ¶¶ 30-32, Ex. 9. In addition, PacBell has agreed to shared collocation, subleased collocation and non-standard size and layout of physical collocation space. See PacBell Draft 271 Reply Comments at App. 1 at 3.

[50] Additionally, it should be noted that the court denied Covad's request for a preliminary injunction. Covad Communications Co. v. Pacific Bell, Civil No. C.98-1887 SI (N.D. Cal. Aug. 9, 1998) (order denying plaintiff's motion for preliminary injunction) ("Covad").

[51] PacBell committed to rearrange space in many of these offices to create additional physical collocation, and Covad will be able to obtain physical space in all but four offices. See Covad at 9.

[52] Pacific Bell Cal. P.U.C. Schedule No. 175-T § 16.4.2.

[53] Declaration of Michael A. McLeland in Support of Defendant Pacific Bell's Opposition to Application for Preliminary Injunction, Covad Communications Inc. v. Pacific Bell, No. C 98-1887 SI, ¶¶ 10-13, 18-20 (N.D. Cal. July 7, 1998) ("McLeland Decl.").

[54] See Covad at 9.

excessive" and "above cost."[55] Sprint similarly complains that "[w]ith the exception of Texas . . . Southwestern Bell has . . . excessive collocation rates."[56] AT&T's second claim is that SWBT failed to abide by the tariff rates.[57] Finally, AT&T suggests that SBC failed to file a permanent tariff in compliance with the Texas PUC's arbitration awards.[58]

Response: SBC's collocation rates are not excessive and are based on cost. In Oklahoma, Missouri, Kansas and Arkansas, SWBT prices physical and virtual collocation on an ICB basis, and recovers only its costs,[59] including equipment and labor. In Texas, collocation is provided pursuant to tariff,[60] at rates set well below cost, as demonstrated in SWBT's filings before the Texas PUC.[61] While Sprint may view SWBT's collocation prices outside of Texas as "excessive," these rates — not the Texas ones — reflect the true costs of collocation (including equipment, labor, and other expenses incurred in establishing and maintaining collocation arrangements).[62]

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55 AT&T, Washington Aff. ¶¶ 7, 13-14.

56 Sprint, Brauer Aff. at 10-11.

57 AT&T, Washington Aff. ¶ 22.

58 Id. at ¶¶ 14-18. See also Hyperion Telecomm. at 14; KMC Telecom at 7; Level 3 Communications at 16.

59 In Oklahoma, Missouri and Kansas, ICB pricing was approved by the state commissions. See, e.g., In re Petition by AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Arbitration Order, Docket No. 97-AT&T-290-Arb at 61 (Kan. Corp. Comm'n filed Feb. 6, 1997); In re Petition by AT&T Communications of the Southwest, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Arbitration Order, Docket No. TO-97-40/TO-97-67 at 19 (Pub. Serv. Comm'n of Mo. Filed Dec. 11, 1996).

60 Contrary to the Consumer Federation, Consumer Federation of America/Consumer Union at 11, SWBT did, in fact, file a collocation tariff in Texas. See Southwestern Bell Telephone Co., Texas Local Access Service Tariff (effective Sept. 10, 1998). However, since SWBT believes that many of the terms ordered by the PUC were improper, it filed the tariff under protest.

61 ICB rates apply where a carrier requests collocation facilities beyond those specified in the tariff. See Southwestern Bell Telephone Co., Texas Local Access Service Tariff, Physical Collocation (Services and Rates) § 3.4 (Sept. 10, 1998).

62 See ALJ Order No. 5, In re AT&T Communications of the Southwest, Inc.'s Petition for Arbitration of Unresolved Issues with Southwestern Bell Telephone Co. Pursuant to § 252(b) of the Telecommunications Act of 1996, Dkt. No. 96-395-U, at 36 (Ark. Pub. Serv. Comm'n Feb. 1997); In re Petition by AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Arbitration Order, Docket No. 97-AT&T-290-Arb at 61 (Kan. Corp. Comm'n filed Feb. 6, 1997).

Similarly, AT&T's allegation that "TCG encounters significant delays and is required to engage in further negotiations with SWBT regarding whether TCG's collocation applications have standard power requirements under the tariff," while technically true, does not tell the whole story.[63] What AT&T failed to note is that TCG requested a power source with 200 amperes while SWBT's tariff and its related technical publication provide that SWBT will supply power through fuse panels "designed to provide . . . 50 (maximum) AMPS."[64] SWBT is willing to provide the higher power levels, but, because TCG is requesting a service outside of the tariff, SWBT is quoting TCG an ICB price for the non-standard power requirements.[65] TCG's problem is with the Texas PUC's tariff, not with SWBT.[66]

Likewise, Level 3 seems to have a problem with the California PUC when it claims that PacBell required it to pay 100% of the non-recurring charges before accepting its collocation application.[67] As best we can determine, Level 3 is complaining about Section 16.3.4 of the California collocation tariff. This provision requires the first collocator in an office to pay 100 percent of the non-recurring charges on the understanding that it will be reimbursed pro rata by each subsequent collocator.[68]

Finally, AT&T's assertion that SBC failed to comply with a Texas PUC order and file tariffs in a timely fashion mischaracterizes the facts. SWBT's Texas collocation tariff was developed in an iterative fashion. Each PUC order raised new questions, to which SWBT proposed answers, but did not reopen settled issues. Within a reasonable period, however, this process exhausted itself as the old questions were answered and new ones no longer created. At that time, the Texas PUC approved SWBT's tariff as revised by its Staff.[69] The Texas PUC did not order its Staff to file the tariff on behalf of SWBT.

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63 AT&T, Washington Aff. ¶ 23.

64 Southwestern Bell Telephone Co., Texas Local Access Service Tariff, Physical Collocation (Services and Rates) § 6.6; SWBT Interconnector's Technical Publication § 3.B.4.

65 See Southwestern Bell Telephone Co., Texas Local Access Service Tariff, Physical Collocation (Services and Rates) § 3.4 ("Requirements based on requests from Collocators that are beyond what is provided for in this tariff, will be provided via the ICB process. An example of this is unique power requirements."). See also Letter from H. Glen Hutchins, Account Manager—Competitive Provider Account Team, Southwestern Bell Telephone Co., to Doris Mongiardini, AT&T Local Services (Sept. 29, 1998) (Exhibit 7 to this Appendix.)

66 AT&T's claim that SBC failed to abide by tariff rates is really a complaint about SWBT's tariff. AT&T apparently is upset that the tariff requires collocators to pay installation charges prior to construction, rather than when 50 percent of the construction on the collocation space is complete. See Southwestern Bell Telephone Co., Texas Local Access Service Tariff, Physical Collocation (Services and Rates) § 3.2 (Sept. 10, 1998).

67 Level 3 Communications, Schuh Aff. ¶ 3.

68 Pacific Bell Cal. P.U.C. Schedule No. 175-T § 16.3.4.

69 Order No. 32, Dkt No. 16196, at 4 (Tex. Public Utility Comm'n).

Billing and Collection Services

The claims concerning SBC's billing and collection services reduce to: (1) disagreements with the choice of billing systems used; [70] (2) a vague, unspecified charge that "an ILEC" in California continued to bill customers who switched local exchange carriers;[71] and (3) an effort to force PacBell to provide billing and collection service to AirTouch for its Calling Party Pays ("CPP") service to wireless customers.[72]

Response: MCI argues that PacBell abandoned the Carrier Access Billing System ("CABS") and forced others to use the Customer Record Information Systems ("CRIS"). PacBell initially used CABS for resale services at the request of the CLECs,[73] but found that it caused a number of ordering and billing problems, not the least of which were a lack of flow-through and a reduction in the ability to generate timely and accurate bills. PacBell suggested that the CLECs' resale billing be moved to the CRIS system, which is the same billing system used for retail services. This suggestion was ultimately accepted by all CLECs, including AT&T, Sprint and MCI. Use of CRIS also permitted PacBell to provide CLECs direct access to PacBell's retail ordering platforms Starwriter and SORD so that the CLECs could input electronically their orders for resold service. As a result, PacBell has been able to increase its productivity and flow-through of resale orders, providing improved preorder, ordering provisioning and billing of resale services to CLECs.[74]

Sprint's vague and unspecified claim about an ILEC billing a customer who changed carriers really does not warrant a response, even assuming that Sprint was referring to PacBell. Indeed, the account team at SBC responsible for servicing Sprint has not received any complaints of this nature from Sprint regarding billing. However, it is possible that, due to the timing of an end user's bill cycle, an end user could receive a current or final bill from PacBell after they have migrated to Sprint or any other CLEC. With the final bill, however, all charges would stop as of the completion of the disconnect from PacBell.[75]

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[70] MCI WorldCom, Beach/Fauerbauch Aff. ¶¶ 11-13.

[71] Sprint, Brauer Aff. at 12.

[72] CoreComm Newco at 8-9; Hyperion Telecomm. at 22-24; KMC Telecom at 18-20; Level 3 Communications at 24-25.

[73] PacBell provides billing for UNEs to all CLECs from CABS. Viveros Aff. ¶ 97.

[74] See Viveros Aff. ¶¶ 30, 41-42, 63-67.

[75] PacBell has created a page on its Web site (http://www.pacbell.com) that allows customers to register complaints about "slamming" — the unauthorized changing of a customer's service provider — and "cramming" — charging subscribers' phone bills for services they did not order. Any customer who receives a PacBell bill in error can report this on the Website, and it will be addressed promptly.

The AirTouch claim with respect to CPP billing and collection is currently pending before the California PUC.[76] It was expressly dismissed as a subject for consideration in the SBC/SNET Order.[77] For these reasons, the Commission should not consider it here. It is worth noting, however, that: (1) in his order setting the prehearing conference in the AirTouch California PUC proceeding, the ALJ noted that AirTouch's case was "vulnerable to a motion to dismiss" for failure to state a claim;[78] (2) PacBell and AirTouch, in fact, had no contract; they had agreed to some terms but key issues were unresolved;[79] and (3) AirTouch demanded that PacBell bill and collect for CPP services "pursuant to tariff" despite the fact that CPP services are banned in California.[80]

Reciprocal Compensation

Several commenters indicate that SBC has not paid reciprocal compensation to Internet service providers in Texas and in California.[81] The Paging and Messaging Alliance of the PCIA also claims that SBC has not paid reciprocal compensation to paging providers as required by the Commission.[82]

Response: These claims distort a legitimate dispute as to SBC's legal obligations and seek to raise here a matter under active consideration by the Commission and in other forums.[83]

As to the merits, SBC has paid reciprocal compensation on local exchange telephone calls and the California PUC Staff recently recommended that the California PUC conclude that

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[76] AirTouch Cellular v. Pacific Bell, No. C.97-12-044 (Cal. Pub. Util. Comm'n filed Dec. 23, 1997.)

[77] SBC/SNET ¶ 29 & n.73.

[78] See AirTouch Cellular v. Pacific Bell, No. C.97-12-044, at 7 (Cal. Pub. Util. Comm'n June 30, 1998) (ALJ ruling convening prehearing conference).

[79] Id. at 4.

[80] While there is no contract or tariff which obligates SBC to provide CPP, SBC has offered AirTouch Billing Name and Address ("BNA") information, which would enable AirTouch to conduct its market trial CPP. See Letter from David D. Kerr, Southwestern Bell Telephone Executive Director — Access & Interconnection Mktg. to Scott Falconer, Vice President, AirTouch Cellular (Nov. 19, 1997) (Exhibit 8 to this Appendix.)

[81] Hyperion Telecomm. at 14-15; KMC Telecom at 12-13; Level 3 Communications at 14-15; e.spire Communications at 4-9; Consumer Federation of America/Consumers Union at 11; MCI at 35-36; e.spire Communications at 15.

[82] Paging and Messaging Alliance at 4-9.

[83] See, e.g., Ex Parte Procedures Established for Formal Complaints Filed by Airtouch Paging Against GTE and for Petitions for Reconsideration of the Implementation of the Local Competition Provisions in Telecommunications Act of 1996, DA 97-2582 (Dec. 10, 1997) (stating that reciprocal compensation issue is being considered in CC Docket Nos. 96-98, 95-185).

PacBell has satisfied the reciprocal compensation requirements of the 14-point checklist.[84] However, SBC has not paid reciprocal compensation for Internet service providers. SBC does not believe, based on the Commission decisions that Internet traffic is interstate traffic, that SBC is required to pay reciprocal compensation for this traffic.[85] Nor does SBC believe it is obligated to do so under its interconnection agreements. This issue is being disputed across the country by every major LEC and many smaller ones.[86] In the event that the issue is resolved in favor of the CLECs, SBC will honor its obligations.

Except in California, where there is a California PUC Order specifically addressing this issue,[87] SBC does not pay reciprocal compensation for one-way paging since it believes that the reciprocal compensation provisions of the Act were intended to apply only to two-way communication. This matter is also the subject of proceedings at the Commission, in which SBC is actively participating.[88]

Tariff Restrictions/Centrex

McLeodUSA Telecom notes that SBC has a continuous property exception in its Centrex tariff restriction in Missouri, and alleges that the provision is unlawful because it is very similar to an exception the Commission recently invalidated in Texas.[89]

Response: This allegation is misleading. SWBT does not have a continuous property restriction in its Missouri tariff. SWBT's interconnection agreements containing a continuous property restriction were entered into before the FCC's decision invalidating the comparable provision adopted by the Texas PUC. The current resale terms and conditions offered by SWBT in Missouri do not contain such a restriction. Under the terms of McLeod's interconnection agreement, it has the right to avail itself of the "prices, terms and all material conditions" of any resale provision in any other Missouri interconnection agreement between SWBT and any other Party ("me-too" clause).[90] McLeod can therefore now take (and could have at any time) the

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84 See PacBell Draft 271 Final Staff Report at 141-142.

85 For the same reason, SBC assesses access charges on ISPs. See MCI WorldCom at 35-36.

86 See, e.g., Southwestern Bell Tel. Co. v. P.U.C. Texas No. 98-50528 (5th Cir. filed June 4, 1998); see also State Telephone Reg. Rep. Vol. 16, No. 20 (Oct. 2, 1998).

87 Application of Cook Telecommunications, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell, Order, Docket No. 97-02-003 (Cal. Pub. Util. Comm'n Mar. 21, 1998).

88 See, e.g., In re Petitions for Reconsideration of the Implementation of the Local Competition Provisions of the Telecommunications Act, CC Docket Nos. 96-98, 95-185 (Aug. 18, 1997).

89 McLeodUSA at 10.

90 In re Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement under the Telecommunications Act of 1996 with Communications Cable-Laying Co., D/B/A/Dial U.S., Notice of Modification to Interconnection Agreement and Application for

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terms and conditions of any other Missouri agreement approved by the PUC between SWBT and another party that does not contain a continuous property restriction.

Unbundled Network Elements

The various charges against SBC in this area are that: (1) PacBell has used intellectual property claims to deny new entrants access to network elements,[91] (2) SBC has "fail[ed] to provide non-facilities-based recombination,"[92] and (3) a variety of claims that SBC is still charging interim rates when final rates should be in place and that the rates being charged are not cost-based.[93]

Response: These claims are all either pending before the FCC or state commissions and thus need not be considered here. [94] Further, the claims are either false or they mischaracterize the status of various state proceedings.

First, the intellectual property claim is false. PacBell has merely advised CLECs that: (1) PacBell's software licensing agreements with its vendors may not provide for sublicensing, (2) that PacBell has no legal right to convey the intellectual property of third party vendors to CLECs and (3) that, therefore, PacBell will look to the CLEC purchasing UNEs to indemnify PacBell if the CLEC's use of the vendor's intellectual property gives rise to a copyright or patent claim against PacBell. The provision is manifestly reasonable, as PacBell should not have to bear the risk of liability. The CLECs can obtain any necessary licenses directly from the vendor. Further, PacBell has offered to negotiate the right to use or license agreements for a CLEC, provided that the CLEC compensates PacBell for the negotiations and any fee imposed by vendors. The only "change" in PacBell's policy post-merger was to point out expressly the intellectual property issue to CLECs. It did not result in the delay or refusal to provide any UNE.

Second, SBC provides both AT&T and MCI Worldcom with non-facilities based combinations pursuant to its interconnection agreements with them. Any CLEC can use the "me-too" provisions of Section 251(i) and obtain the same combinations. SBC will also

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Approval Thereof, Docket No. TO-96-440, Attachment A at 23 (Mo. Pub. Serv. Comm'n March 14, 1997).

91 AT&T at 21; see also MCI WorldCom, Beach/Fauerbauch Aff. at 16.

92 Consumer Federation of America/Consumers Union at 11.

93 Id.

94 The intellectual property claim raised by AT&T is currently pending before the FCC, In re Implementation of Intrastructure Sharing Provisions in the Telecommunications Act of 1996, Report and Order, 12 FCC Rcd. 5470 (1997), and In re Petition of MCI for Declaratory Ruling That New Entrants Need Not Obtain Separate Licenses or Right-to-Use Agreements Before Purchasing Unbundled Network Elements, CC Docket No. 96-98, CCBPol Docket No. 97-4 (filed Mar. 11, 1997) and before the California PUC in connection with PacBell's Draft 271 Application. A decision is expected shortly from the California PUC.

negotiate with CLECs to combine UNEs to provide end-to-end service, exclusively using PacBell UNEs under the terms and conditions contained in the NCS generic appendix.

Third, with respect to final rates, Oklahoma's interconnection rates became permanent in the spring of 1998 and are being incorporated into several interconnection agreements between SWBT and various CLECs, including AT&T.[95] In California, the PUC has not yet issued a final decision in the UNE cost-pricing phase of the Open Access and Network Architecture Development (OANAD) proceeding, so the California rates are necessarily interim rates.[96]

Similarly, the Consumer Federation's claim that non-recurring charges are not cost-based stems from its failure to understand the rate setting process. PacBell's nonrecurring charge are subject to PUC orders, and the California PUC has not updated its order setting those rates.[97] The non-recurring charges currently in effect were set by arbitration in 1996 and 1997, based upon then-current cost studies.[98] Updated non-recurring cost studies have been presented to the California PUC in OANAD, and a proposed decision is expected shortly, with a final decision anticipated in 1999.[99]

Finally, PacBell's network element prices were set through arbitration, where the arbitrator was required to set cost-based rates under the Act. A federal judge, in fact, confirmed that the interim rates established by the California PUC in the arbitrations based on the total element long run incremental cost were "forward looking" cost-based rates.[100] In Texas, the

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[95] See In re Application of Cox Oklahoma Telecom., Inc., for a Determination of the Costs of, and Permanent Rates for, the Unbundled Network Elements of Southwestern Bell Telephone Co. and In re Joint Application of Southwestern Bell Telephone Co. and AT&T Communications of the Southwest, Inc. for Determination of Costs and Permanent Rates for Certain Southwestern Bell Telephone Co., Final Order, Cause Nos. PUD 970000213 and PUD 970000442 (Okla. Pub. Util. Comm'n July 17, 1998).

[96] In re Open Access and Network Architecture Development of Dominant Carrier Networks, Interim Order, PacBell Draft 271 Proceeding (Cal. Pub. Util. Comm'n Apr. 7, 1998).

[97] SBC Communications Inc., Pacific Bell, and Pacific Bell Communications, Affidavit of Curtis L. Hopfinger, PacBell Draft 271 Proceeding, ¶¶ 13, 19 (Cal. Pub. Util. Comm'n March 31, 1998) ("Hopfinger Aff.").

[98] In re Petition of AT&T Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell, Opinion, Application 96-08-040 (Cal. Pub. Util. Comm'n Dec. 9, 1996).

[99] AirTouch Paging of California v. Pacific Bell, No. C 98-2216 MHP (N.D. Cal. filed May 29, 1998).

[100] MCI Telecomm. Corp. v. Pacific Bell, Civil No. C.97-1756, slip op. at 11-B (N.D. Cal. Sept. 26, 1998).

PUC adopted the TELRIC methodology in setting rates for network elements and interconnection.[101]

Access to xDSL service

MCI and Sprint complain that SBC does not provide CLECs xDSL conditioned loops on the same basis that it provisions those loops for its own use and that it has not set prices for such a UNE.[102]

Response: PacBell offers xDSL conditioned loops under both state and federal tariffs. PacBell offers unbundled xDSL loops pursuant to individually negotiated interconnection agreements. The tariff rates for the service are set forth in PacBell's tariffs.

SWBT has agreed to provide DSL conditioned loops in Texas in connection with the 271 collaborative process. SWBT did not offer DSL conditioned loops prior to the release of the FCC's decision in In re Deployment of Wireline Services Offering Advanced Telecommunications Capability[103] because it did not believe that Section 251 applied to those facilities. While SBC has sought reconsideration of that decision, it has been negotiating with CLECs the terms under which it will provide conditioned loops.[104] SWBT will establish rates for the service in connection with the on-going negotiations to provide the service.

Further, MCI had the right under its interconnection agreements to submit a request for UNEs not described in those agreements. MCI did not submit such a request for this type of UNE until recently. That request is currently under review. Similarly, Sprint did not request a xDSL capable loop until recently and has not yet provided SBC with any concrete proposal.

2. COMPLIANCE WITH SECTION 271

A number of commenters criticize SBC because it has not received Section 271 approval in its region.[105]

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[101] Southwestern Bell Telephone Co. v. AT&T Communications of the Southwest, Inc., No. A97-CA-132 SS, 1998 WL 657717, at *10 (S.D. Tex. Aug. 31, 1998).

[102] MCI WorldCom at 40-41; Sprint, Bauer Aff. at 11.

[103] Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, 1998 WL 458500 (Aug. 7, 1998).

[104] See Southwestern Bell Telephone's Collaborative Process Affidavit of William C. Deere, In re Investigation of Southwestern Bell Telephone Company's Entry into the InterLATA Telecommunications Market, Project No. 16251, ¶¶ 21-27 (Tex. Pub. Util. Comm'n filed July 3, 1998) ("Deere Aff.").

[105] Consumer Coalition at 8; Consumer Federation of America/Consumers Union at 11, 14, 19-20; CoreComm Newco at 6-7; e.spire Communications at 13-15; MCI WorldCom at 7-8;

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Response: The Commission held in Bell Atlantic/NYNEX that: "[T]he determination of whether the proposed merger is in the public interest has no bearing on the question of whether authorization of Bell Atlantic-NYNEX to provide in-region interLATA services would be consistent with the public interest, convenience, and necessity."[106] Similarly, the Commission has agreed that the status of Section 271 proceedings should play no role in the merger review.[107] Accordingly, the claim is irrelevant to this proceeding. In all events, as demonstrated below, SBC has been working diligently to satisfy the requirements of that Section.

State Utility Commission Statements Regarding Section 271

Some commenters claim that the Texas PUC is frustrated with the pace at which SBC is opening its markets.[108]

Response: These claims are based on cherry-picked statements that have been taken out of context. The assertions rely on statements made during a Texas PUC Open Meeting in May, 1998, and a portion of the Texas PUC's Recommendation regarding SWBT's 271 application.[109] In July, however, Chairman Wood expressed his concern that statements made by members of the PUC regarding SBC's market opening efforts are being used "as a bludgeoning instrument that misrepresents what I think we're all about."[110] The regulators, in fact, have acknowledged that progress has been made. For example, at the July Open Meeting of the Texas PUC,

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Texas Public Utility Comm'n at 4-6; Sprint at 52-54; Telecomm. Resellers Ass'n at 11; Time Warner at 3-4; AT&T at 12-14.

[106] BA/NYNEX ¶ 203. Furthermore, PacBell's and SWBT's Section 271 filings are pending before the California and the Texas PUCs, respectively.

[107] SBC/Telesis ¶ 88 ("No party has shown that Congress, in adopting the 1996 amendments, intended to freeze the RBOCs in place until the amendments were fully implemented.").

[108] Focal Communications at 3-4; Level 3 Communications at 14; CoreComm Newco at 6; Time Warner at 3-4; MCI WorldCom at 8; AT&T at 15. AT&T's comments along these lines are particularly misleading and self-serving when AT&T has failed to comply with Texas PUC orders in implementing its interconnection agreement with SWBT to develop its Electronic Data Interface (EDI) gateway. AT&T has "refused to participate in any meaningful way" in the EDI process. Memorandum from Howard Siegel, Presiding Officer, Texas Public Utility Commission, to Chairman Wood and Commissioners Walsh and Curran, Docket No. 19000 (Tex. Pub. Util. Comm'n filed Oct. 5, 1998) (relating to the implementation of SWBT interconnection agreements with AT&T and MCI).

[109] Meeting of the Texas Public Utility Commission, Project 16251 – Investigation Into Southwestern Bell Telephone Company's Entry Into the InterLATA Telephone Market in Texas, Transcript at 328-29 (May 21, 1998).

[110] Meeting of the Texas Public Utility Commission, Project 16251 – Investigation Into Southwestern Bell Telephone Company's Entry Into the InterLATA Telecommunications Market in Texas, Transcript at 2 (July 22, 1998).

Commissioner Walsh stated that she was "personally . . . pleased with [the] attitude that Southwestern Bell has exhibited" and that "I believe and I think other people around the country believe that in terms of setting up procedures to handle . . . CLECs' orders and also how far they are along on the OSS, they may be further along than anybody."[111] In addition, the Texas PUC notes in its comments that "[t]he collaborative process is resulting in progress on the issues, and SWBT is cooperating in the effort to find solutions."[112]

As demonstrated below, Commissioner Walsh is correct. SBC has made and continues to make good faith efforts to open its markets in accordance with Section 251 and 271. The Affidavit of Steven M. Carter filed with the SBC/Ameritech Public Interest Statement summarized SBC's progress in opening its markets through July.[113] SBC has continued to make great strides in opening its markets since filing the transfer Applications and will continue to do so:[114]

- SBC has spent a total of $1.2 billion on market opening, $100 million of that since the transfer Applications were filed. PacBell and Nevada Bell have spent $702 million, and SWBT has spent more than $493 million.

- At the end of September 1998, 264 CLECs were operational and passing resale, interconnection or UNE orders to SBC in SBC territory.

- Over 547 switches and more than 6,500 route miles of fiber network have been built by CLECs.

- SBC has provided more than 85,000 interconnection trunks since the filing, for a total of 438,400 trunks.

SBC has also worked closely with the state PUCs and with the CLECs to open its markets further. For example, on July 30, 1998, the Texas PUC staff, CLEC representatives and SWBT began a collaborative process to work toward a mutually agreeable structure for opening SWBT's markets. The process entailed a total of 27 sessions over three months. Fifty days and approximately 6,000 hours of time were committed to preparing for and attending these collaborative sessions with six to twenty SWBT employees attending each session. During the process, SWBT agreed with numerous PUC and CLEC suggestions and created a Comprehensive Interconnection Proposal ("CIP") that reflects the provisions of the various interconnection agreements in Texas as of July 1, 1998. The CIP is still subject to the collaborative process, but when it is approved by the Texas PUC, the CIP will be available on SWBT's Internet site where it can be printed, signed by the CLEC and sent to SWBT for

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111 Id. at 4.

112 Texas Public Utility Commission at 5.

113 See Carter Aff. ¶¶ 5 - 23.

114 See Kahan Reply Aff. ¶ 37 & Attachment 14.

signature and filing.[115] Additionally, on July 30, 1998, the California PUC staff, CLEC representatives and PacBell began a similar collaborative process. In 40 sessions, over six weeks, thousands of man hours were committed to preparation for and attending these sessions. PacBell subject matter experts attended each session, and PacBell made numerous concessions during the collaborative process.[116]

3. SBC'S NEGOTIATION POSTURE

Ernst & Young Dispute

AT&T alleges that SBC improperly influenced Ernst & Young to withdraw from providing consulting services for AT&T, and that AT&T's failure to complete development of its Electronic Data Interface ("EDI") was a result of SBC's activities. [117]

Response: The complaint was the subject of a suit by AT&T against SBC in which the district court recently granted summary judgment in favor of SBC on all counts.[118] Further, the Texas PUC concluded that AT&T has "refused to participate in any meaningful way . . ." in efforts to complete its EDI development and is considering sanctions against AT&T.[119]

Negotiations For Interconnection Agreements

Some commenters suggest that SBC and its affiliates have been difficult in their negotiations with competitors.[120] Hyperion cites the CEO of Focal's claim that Focal does not operate in SBC's service area because SBC is "one of the ILECs least open to competition."[121]

Response: The claim that SBC is a tough negotiator was considered and dismissed by the Commission in its approval of the SBC/Telesis merger, where the Commission concluded that "each individual act alleged by AT&T and ICG and admitted by applicants consists of . . .

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[115] Id. ¶ 38.

[116] See PacBell Draft 271 Final Staff Report, at 9-10; PacBell Draft 271 Reply Comments, App. 1, App. 2.

[117] AT&T at 15, Morgan Aff. ¶¶ 4-7; Consumer Federation of America/Consumers Union at 17.

[118] Southwestern Bell Telephone Co. v. AT&T Communications of the Southwest, Inc., No. 98-CA-4627 (W.D. Tex. Nov. 11, 1998) (consolidated).

[119] In re Implementation of SWBT Interconnection Agreements with AT&T and MCI, Memorandum, Docket No. 19000 (Tex. Pub. Util. Comm'n Oct. 5, 1998).

[120] Consumer Federation of America/Consumers Union at 10; CoreComm Newco at 6; e.spire Communications at 15; Focal Communications at 3; Level 3 Communications at 13, 17, 26; Hyperion Telecomm. at 16-17, 25; KMC Telecom at 11.

[121] Hyperion Telecomm. at 25.

business conduct that is legally permissible."[122] This conclusion applies with equal force in the instant proceeding. None of the allegations concerning SBC's negotiating positions demonstrates anything to the contrary. Similarly, the Hyperion claim is moot: Focal's CEO has apparently changed his mind since Focal recently began offering switched local service in San Francisco, where PacBell is the ILEC.[123]

4. LITIGATION AND COMPLIANCE WITH PUC ORDERS

Bill of Attainder Case

Several commenters charge that SBC's pursuit of the Bill of Attainder case is plainly "sham" litigation.[124]

Response: This allegation is without basis. SBC merely presented a legal issue for resolution by the courts. It did not use self-help or otherwise attempt to evade applicable legal requirements. After winning summary judgment from the District Court,[125] SBC did not proceed precipitously, but deferred any market entry while the court considered the stay motions. SBC's effort to vindicate its constitutional rights through the legal process is not an indication that it is acting anticompetitively or is trying to shirk regulatory obligations. As the Commission has repeatedly recognized, such activity constitutes "constitutionally protected free speech" that is not the proper subject of scrutiny in a merger proceeding.[126]

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[122] SBC/Telesis ¶ 37 & n.82. See also, Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc., 627 F.2d 919, 927 (9th Cir. 1980) ("Of course, it is free and open competition that the Sherman Act protects, and not any right of one competitor to be free of rough treatment at the hands of another"), cert. denied, 450 U.S. 921 (1981), quoted with approval in Los Angeles Land Co. v. Brunswick Corp., 6 F.3d 1422, 1427 (9th Cir. 1993), cert. denied, 510 U.S. 1197 (1994); Northeastern Tel. Co. v. AT&T, 651 F.2d 76, 79 (2d Cir. 1981) ("dominant firms . . . must be allowed to engage in the rough and tumble of competition"), cert. denied 455 U.S. 943 (1982), citing Berkey Photo Inc. v. Eastman Kodak Co., 603 F.2d 263 (2d Cir. 1979), cert. denied, 444 U.S. 1093 (1980). See also Antitrust Law Developments at 235 (citing decisions that allow vigorous competition).

[123] Communications Daily, Oct. 26, 1998, available at 1998 WL 1067529.

[124] AT&T at 14; Consumer Federation of America/Consumers Union at 15; South Austin Community Coalition Counsel at 6.

[125] SBC Communications Inc. v. FCC, 981 F. Supp. 996 (N.D. Tex. 1997).

[126] SBC/Telesis ¶ 37. In fact, the major IXCs have also engaged in litigation concerning the rules governing access lines, interconnection to their networks and the decision of state arbitrators. See, e.g., AT&T v. Pacific Bell, No. C 97-0080 SI, 1998 WL 246652 (N.D. Cal. May 11, 1998); AT&T v. Southwestern Bell Telephone Co., No. 97-CV-4199 (D. Kan. filed Oct. 10, 1997) ; AT&T v. Southwestern Bell Telephone Co., No. 98-CV-4099 (D. Kan. filed June 17, 1998); AT&T Communications of the Southwest, Inc. v. Southwestern Bell Telephone Co., No. 97-CV-1573 (W.D. Mo. filed Dec. 4, 1997); AT&T Communications of the Southwest, Inc. v.

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Furthermore, two of the four federal judges who considered SBC's position agreed with SBC.[127] More recently, during oral argument on BellSouth's Section 271 challenge, a three-judge panel of the D.C. Circuit indicated through their questioning that they had serious concerns about the constitutionality of the interLATA restrictions.[128]

State PUC and Commission Orders

Several CLECs allege that SWBT has refused to honor CLEC requests for services or facilities where the Texas PUC had required SWBT to do so and has refused to make customer contracts available for resale despite the Commission ruling in the Local Exchange Order.[129] Additionally, the Consumer Federation claims that SBC refused to charge agreed-upon per order charges in violation of court and Commission orders.[130]

Response: The orders of the Texas PUC arbitrators which form the basis of the first complaint were fact specific to the CLECs involved in those PUC proceedings and did not apply generally.[131] Once the Texas PUC reversed the arbitrator and ruled that the decisions had general applicability,[132] SWBT has applied these orders to non-parties as well. SWBT is also making existing customer service agreements and term/volume contracts available for resale in

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Southwestern Bell Telephone Co., No. 97-CV-1573 (No. 98-CV-0501) (W.D. Mo. filed Apr. 17, 1998); AT&T v. Southwestern Bell Telephone Co., No. A-97-CA-029 (W.D. Tex. Aug. 17, 1998); AT&T v. Southwestern Bell Telephone Co., No. A-98-CA-196 (W.D. Tex. Aug. 31, 1998); MCI v. Pacific Bell, No. 97-0670 (N.D. Cal. Sept. 29, 1998); MCI v. SWBT et al., No. A-97-CA-132 (W.D. Tex. Aug. 31, 1998); MCI v. SWBT, the Texas PUC, and Comm'r, No. A-98-CA-199 (W.D. Tex. Aug. 31, 1998).

[127] Judge Kendall of the Northern District of Texas and Judge Smith of the Fifth Circuit both agreed with SBC. SBC Communications Inc. v. FCC, 981 F. Supp. 996 (N.D. Tex. 1997), rev'd, 154 F.3d 226 (5th Cir. 1998); SBC Communications Inc. v. FCC, 154 F.3d 226 (5th Cir. 1998) (Smith, J., dissenting). In addition, Judge Sentelle of the D.C. Circuit agreed with BellSouth on the issue. BellSouth Corp. v. FCC, 144 F.3d 58 (D.C. Cir. 1998) (Sentelle, J., dissenting).

[128] D.C. Circuit Revives Bells' Hopes of Overturning Telecom Act's InterLATA Service Restrictions, Telecomm. Rep., Sept. 28, 1998, available at 1998 WL 8487723; (reporting on the oral argument held in BellSouth Corp. v. FCC, No. 98-1019 on Sept. 25, 1998).

[129] Hyperion Telecomm. at 15-16, 17-18; KMC Telecom at 9-10, 12-13; see also Consumer Federation of America/Consumers Union at 11.

[130] Consumer Federation of America/Consumers Union at 11.

[131] Order Approving Interconnection Agreements, (Texas Pub. Util. Comm'n issued Dec. 19, 1996).

[132] Complaint of KMC Telecom, Inc. Against Southwestern Bell Company for Violations of Section 252(c)(4) of the Telecommunications Act of 1996, Order No. 6, Docket No. 17759 (Tex. Pub. Util. Comm'n Mar. 9, 1998).

Texas at the 21.6% wholesale discount, subject to adjustment to the new discount to be applied to existing contracts as determined by the arbitrator in the pending proceeding on this matter.[133]

SBC has established per order charges through independently negotiated agreements and is in compliance with those agreements. SWBT also makes available to all CLECs the per order charges established in the consolidated "Mega 1 and Mega 2" Arbitration proceeding in Texas involving AT&T, MCI WorldCom and others.[134]

Refunds on 800-Readyline-Type Charges

Total-Tel and Telamarketing Investments argue that SBC lacks the requisite character qualifications because SBC has not paid refunds for overcharges to IXCs reselling 800 services.[135]

Response: Total-Tel and Telamarketing Investments are complaining about a bona fide dispute involving most of the local exchange industry as to the proper access charges for 800-Readyline-Type services. The suit was initially brought in district court and the liability question was deferred to the Commission for decision.[136] SBC and the other ILECs sought judicial review of the Commission's decision.[137] The case is now before the District Court for a determination of damages.[138]

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[133] In re Investigation of Southwestern Bell Telephone's Entry into the Texas InterLATA Telecommunications Market, Staff Collaborative Session Update No. 3 at 11, Project No. 16251.

[134] Letter from Christian A. Bourgeacq, Senior Counsel, Southwestern Bell Telephone Co. to Administrative Law Judge Katherine D. Farroba, Public Utility Counsel of Texas at 3 (Oct. 20, 1998) (regarding Project No. 16251; Section 271 Collaborative Process; Public Interest Follow-Up Information).

[135] TotalTel at 5-7. In addition, the Parkview Area Seniors question SBC's compliance with FCC orders on such issues as rebate overcharges. Parkview Area Seniors at 6. Although SBC has exercised its legal right to challenge the lawfulness of regulatory requirements to make refunds, Southwestern Bell Telephone Co. v. FCC, 116 F.3d 593 (D.C. Cir. June 27, 1997), SBC has never refused to make a refund if required to do so.

[136] Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania, 7 FCC Rcd. 408 (Jan. 13, 1992); Long Distance/USA, Inc. v. Southern Bell Tel .& Tel. Co., Order, CA No. 88-1477, (D.D.C. Sept. 24, 1988).

[137] Southwestern Bell Telephone Co. v. FCC, 116 F.3d 593 (D.C. Cir. June 27, 1997).

[138] See Long Distance/USA v. Southwestern Bell Telephone Co., No. 88-CV-1477 (D.D.C. filed May 31, 1998).

5. MISCELLANEOUS ALLEGATIONS

Customer Proprietary Network Information

Several commenters allege that SBC has used customer proprietary network information ("CPNI") improperly to winback customers and that PacBell and SWBT have been cited by the state utility commissions for misuse of CPNI.[139]

Response: SWBT and PacBell have not and do not use CPNI to "winback" customers. Neither the California PUC nor the Texas PUC has cited SBC for misuse of CPNI to maintain or winback customers.[140] For a brief time, PacBell contacted customers who had disconnected service in an effort to retain their business, but did not use customer proprietary information to do so. PacBell altered its procedures in this regard after consulting with the Department of Justice.[141] At all times, PacBell and SWBT have been and are in compliance with, and will continue to abide by, FCC guidelines concerning winback and customer proprietary network information.[142]

Penalties for Customer Contract Termination

The Consumer Federation claims that SBC's practice of including penalties for customer contract terminations is anticompetitive.[143]

Response: In Texas, SWBT allows the assumption of existing customer contracts by a reseller with no termination liability billed to the end user. In other states, SBC has long-term agreements with end users that contain termination charges if the contract is canceled during the term. These users entered into the agreements in order to secure lower rates. These provisions

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[139] Focal Communications at 4-5; Hyperion Telecomm. at 19-20, KMC Telecom at 15; Level 3 Communications at 20; AT&T at 21; Consumer Federation of America/Consumers Union at 12.

[140] Pac Bell Draft 271 Final Staff Report at 47.

[141] For the three-month period of December 1996 to February 1997, PacBell called customers in an attempt to retain them as customers based on the fact that the end-user had disconnected PacBell's service to migrate to a CLEC. PacBell would know that a customer intended to disconnect its PacBell service whether or not PacBell provided wholesale service to the CLEC and was not using CPNI. DOJ's concern centered on the fact that PacBell called customers before they had actually changed service to a CLEC, coupled with the fact that PacBell was experiencing delays in migrating customers. Although PacBell's winback practices did not violate any law or regulation, in response to DOJ's concerns, PacBell modified its practices and since February 1997 only calls CLEC end users after they have migrated to the CLEC.

[142] Collaborative Process Affidavit of Barbara L. Wilkinson on Southwestern Bell Telephone Co., In re Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, ¶ 3 (Tex. Pub. Util. Comm'n filed July 3, 1998) ("Wilkinson Aff.").

[143] Consumer Federation of America/Consumers Union at 12.

are not anticompetitive, but rather allow the consumer to choose an open-ended contract or a term contract with lower rates. To date, neither the FCC nor the applicable state commissions has found that these provisions are unreasonable or otherwise unlawful.

Quality of Service

The Consumer Coalition alleges that service quality complaints doubled after the SBC/PacTel merger,[144] and others claim that the California PUC has instituted an investigation into service quality standards based on the increased number of formal and informal complaints it received.[145]

Response: These claims confuse allegations with facts. PacBell, for the second year in a row, has been recognized as one of the top residential local telephone companies in customer satisfaction.[146] Since the merger with SBC, PacBell has improved service quality such that it met or exceeded the service goals established by the California PUC in six of the seven quality measures in each of the twelve months after the merger closed.[147]

PacBell recognizes that the informal complaint rate has increased since 1996. While it is making every effort to reduce the number of complaints, large fluctuations in complaints are not unprecedented and this fluctuation cannot be attributed to the merger. The variations in complaint rates are due in large part to variables outside of PacBell's control, such as slamming by third parties, weather conditions, etc. In addition, there was a high demand for PacBell's products and services — as evidenced by growth in second lines and other products and services — that outstripped PacBell's ability to meet that demand in some cases, despite best efforts. PacBell is making every effort to reduce the number of complaints and to continue its reputation as a world class leader in service. For example, from January 1997 to October 1998, PacBell added over 9,000 customer-facing employees.

Moreover, contrary to the assertions, California PUC's investigation into service quality standards was not instituted to deal with concerns about PacBell's service but to address minimum service quality standards for the entire industry and to decide whether the standards should apply equally or at all to both large and small carriers.[148]

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[144] Consumer Coalition at 20-21.

[145] CoreComm Newco at 9-10; Focal Communications at 6-8; Hyperion Telecomm. at 24-25; KMC Telecom at 20-21; Level 3 Communications at 22-23.

[146] Public Interest Statement at 41; Kahan Aff. ¶ 96.

[147] Kahan Aff. ¶¶ 96-98 & Attachments D-F.

[148] Order Instituting Rulemaking on the Commission's Own Motion Into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B (Cal. Pub. Util. Comm'n filed June 18, 1998).

Closing Service Offices

Several commenters discuss the Complaint filed by the Utility Consumers Action Network (UCAN) with the California PUC opposing SBC's proposal to close certain service offices alleging that closing these offices would adversely affect poor and elderly customers.[149]

Response: The California PUC found UCAN's complaint to be without merit. PacBell demonstrated in response to UCAN that operating under an Authorized Payment Location (APL) system is much more cost effective than operating service offices and would not adversely affect the poor or the elderly. After a thorough review, the California PUC determined that PacBell is meeting commission standards, stating: "Pacific [Bell] is providing numerous APLs in areas where they are most needed . . . Pacific [Bell] has taken every effort to ensure that its customers will not be harmed or negatively impacted in any way."[150]

Use of SONET Rings

The Michigan Consumer Federation alleges only one problem with SBC's service — that SBC is relying excessively on single-thread technology rather than deploying SONET ring technology.[151] In particular, the Michigan Consumer Federation highlights a service outage that occurred in August 1998 in Tulsa, Oklahoma, and attributes it to the lack of SONET ring technology.

Response: SBC is not, and has no intention of, relying on "single-thread" technology. SONET is the transport vehicle of choice for all new SBC fiber deployment, and SBC is actively deploying self-healing SONET rings throughout its network. The Tulsa outage occurred before SBC had finished deploying SONET technology in Tulsa and has no relevance to SBC's commitment to the use of SONET rings. Moreover, the Tulsa outage only affected long-distance service. Dial tone and local calling service was not affected, as the Michigan Consumer Federation incorrectly suggests.[152]

Vertical Sales Practices

Several commenters allege that PacBell uses improper sales techniques for vertical sales and services.[153]

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[149] CoreComm Newco at 9-10; Focal Communications at 6-8; Hyperion Telecomm. at 24-25; Level 3 at 22-23.

[150] Cal. Pub. Util. Comm'n, Reso. T-16193 (Sept. 3, 1998).

[151] Michigan Consumer Federation at 16-17.

[152] D. R. Stewart, Southwestern Bell Outlines Blackout Prevention Plan. Tulsa Trib. & World at 9 (Nov. 4, 1998).

[153] Consumer Coalition at 21-23; AT&T at. 46-47; CoreComm Newco at 9-10; Focal Communications at 6-8; Hyperion Telecomm. at 24-25; KMC Telecom at 20-21; Level 3 Communications at 22-23. They base their claims on a petition filed with the California PUC by

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Response: These claims are based on bare allegations and are unfounded. The ALJ assigned to the case has not granted the temporary injunction requested by ORA, TURN and TIU. On November 6, 1998, the ALJ ordered PacBell to file a motion to dismiss by November 21, 1998. If any issues survive the motion they will be heard on January 31, 1999.[154]

SBC is also confident that the complaints will ultimately be dismissed. PacBell has internal and external quality assurance standards that ensure ethical sales practices, and customer surveys show a high level of customer satisfaction with PacBell Service Representatives. Customers who request that they not receive sales calls have their accounts marked to prevent further calls. Further, every sale made over the telephone is confirmed by follow-up letter. Service Representatives and managers are terminated for unethical sales activities.[155]

Affiliate Relations

The Consumer Federation alleges in its comments that SBC policy on Section 272 compliance is "troubling."[156] They claim that SBC's practices with regard to its affiliates for long distance service are "in blatant violation of the structural safeguards required by the Act."[157]

Response: Aside from being vague, the claim is wrong. SBC complies with Section 272 as demonstrated in its Section 271 filings before the Texas[158] and California PUCs.[159] SBC's long distance and local exchange affiliates are separate wholly owned subsidiaries of SBC.[160]

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the Office of Ratepayer Advocates ("ORA"), and complaints lodged by the Telecommunications International Union ("TIU"), Toward Utility Rate Normalization ("TURN"), and the Utility Consumer Action Network ("UCAN").

[154] The Utility Consumers' Action Network v. Pacific Bell, Case 98-04-044, Tr. 103-04.

[155] See generally Pacific Bell, Pacific Telesis and Southwestern Bell Communications, Declaration of Denise M. Giley, The Utility Consumers' Action Network v. Pacific Bell (U 1001 C), Pacific Telesis and Southwestern Bell Communications, C.98-06-049 (Cal. Pub. Util. Comm'n filed Aug. 20, 1998) ("Giley Decl.").

[156] Consumer Federation of America/Consumers Union at 18.

[157] Id. at 12, 18-19.

[158] See generally Southwestern Bell Telephone Company's Collaborative Process Affidavit of John Lube, In re Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251 (Tex. Pub. Util. Comm'n filed July 3, 1998) ("Lube Aff.").

[159] See generally SBC Communications Inc., PacificBell and PacificBell Communications Rebuttal Affidavit of Leona Lea Jones, PacBell's Draft 271 Application (Cal. Pub. Util. Comm'n filed Apr. 30, 1997) ("Jones Rebuttal Aff.").

[160] See generally Lube Aff. For the complete corporate structure of SBC and its affiliates, see "Description of the Applicants and Their Existing Business" attached to the Public Interest Statement.

The officers and directors of the long distance subsidiary, SBCS, and its subsidiaries, SBCS-Texas and PBCom, do not serve as officers or directors of SWBT, PacBell or Nevada Bell.[161] Except to the extent permitted under Section 272, the reporting chains for the officers of SBCS, PBCom and SBCS-Texas and for the officers of the telephone companies are distinct.[162] The only SBCS officers who report to officers of SBC are those who perform functions such as tax, treasury and legal services, and they report to officers of SBC who perform similar functions for SBC and its affiliates, as permitted by Section 272(b)(3).[163]

SWBT and PacBell also post on the Internet listings of services provided by SWBT or PacBell for their affiliates and, pursuant to the recommendation of the Texas PUC, SBC posts the SBCS territory involved in each affiliate agreement. SWBT and PacBell also post on the Internet the entire text of each agreement that addresses services or assets provided to an affiliate by SBC. This satisfies the Section 272 requirement that a written description of each asset or service transferred, along with the terms and conditions of the service, be posted.[164] All services provided by any of the Telcos to the long-distance affiliates are available to other IXCs on the same rates, terms and conditions.[165]

Prices in PacBell Territory

AT&T asserts that while PacBell has not increased rates for local service since the merger with SBC, it has "retreated" from its plan to lower rates.[166]

Response: PacBell has not increased prices for regulated service prices in California since it was acquired by SBC, and, in fact, it has decreased prices for some services. For example, local toll rates have declined 29% for residential and business customers — a total of $216 million. Deep discounts have also been offered to customers for packages of custom calling features. The increase in penetration rates for these services indicates that customers recognize the value of these packages.

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[161] Lube Aff. ¶¶ 9-10.

[162] Lube Aff. ¶¶ 11-12.

[163] Lube Aff. ¶¶ 3-13; Jones Rebuttal Aff. ¶ 17.

[164] Lube Aff. ¶ 17. A sample of the information available to the public from SBC's Home Page is attached as Exhibit 9.

[165] See Southwestern Bell Telephone Company's Collaborative Process Affidavit of Kathleen Larkin, In re Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, ¶ 6 (Tex. Pub. Util. Comm'n filed July 3, 1998) ("Larkin Aff."); SBC Communications Inc., Pacific Bell and Pacific Bell Communications Affidavit of Kathy Rehmer, PacBell's Draft 271 Proceeding, ¶ 18(i) (Cal. Pub. Util. Comm'n filed Mar. 31, 1998) ("Rehmer Aff.").

[166] AT&T at 20.

PacBell has proposed an increase for some services such as directory services, emergency call interruption, and busy verification.[167] With regard to such services, prices are typically below cost and have not increased in the last fifteen years. These requests to increase prices are pending before the California PUC and will be subject to hearings beginning in December 1998.[168]

Funding High-Tech Community Activities in California

The Consumer Coalition alleges that SBC has not kept the promise it made during the PacBell merger to fund to a wide variety of high-tech community activities with a $50 million fund.[169]

Response: The Pacific Bell Community Technology Fund kick-off is set for November 18, 1998. A $10 million check from PacBell will launch the Fund, and its non-profit governing foundation, the Community Technology Foundation. The remaining pledge of $40 million will be provided to the Fund in annual installments of at least $5 million.[170] This kick-off event is being held less than four months after the California PUC approved the CPA Organization Charter,[171] and little more than one month after the Foundation's first board meeting. Not only has SBC kept its promise to fund the high-tech community activities, SBC has worked to set up the Foundation and Fund in accord with the wishes of the 134 CPA signatories as quickly as possible within the regulatory framework.[172]

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[167] In Re Application of Pacific Bell (U-1001-C) for Pricing Flexibility and To Increase Prices of Certain Operation Services, To Reduce the Number of Monthly Directory Assistance Call Allowances and To Adjust Prices for Four Centrex Option Features, Docket No. 98-05-38 (Cal. Pub. Util. Comm'n filed May 5, 1998).

[168] In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority for Pricing Flexibility and to Increase Prices of Certain Operator Services, to Reduce the Number of Monthly Directory Assistance Call Allowances, and to Adjust the Prices for Four Centrex Optional Features, A.98-05-038.

[169] Consumer Coalition at 31.

[170] Pacific Bell Press Release, Eight California Community Coalitions and Pacific Bell to Launch $50 million in Community Technology Grants (Oct. 3, 1998), available at Westlaw, 10/13/98 Bus. Wire 09:35:00.

[171] Resolution T-16172, Public Advocates on Behalf of the Pacific Telesis/SBC Merger Signatory Coalitions, Submits an Organizational Charter Implementing the Community Partnership Commitment, (Cal. Pub. Util. Comm'n July 23, 1998).

[172] Id.

Programs for Low-Income Families

The Edgemont Neighborhood Coalition alleges that SBC does not have a good record on enrolling people in federal and state programs designed to make telephone service affordable to low-income families.[173]

Response: SBC's record of enrolling people in these programs has been exemplary. For example, approximately 23% of all PacBell's customers participate in its self-nominating Lifeline program. Fifty percent of all Lifeline customers in the United States are in California. In its "Community Partnership Agreement," approved by the California PUC in April, 1997, PacBell committed to maintaining its leadership position in enhancing the availability and penetration of telecommunications services. In addition, PacBell is making good faith efforts towards helping California achieve 98% penetration in low-income, minority and limited-English speaking communities within the next seven years.

Capital Expenditures v. Depreciation

The Michigan Consumer Federation alleges that SBC has not devoted enough resources to its network since its annual depreciation charges have exceeded its total plant additions for several years.[174]

Response: This allegation is untrue. SBC's 10-K filings with the Securities and Exchange Commission for the fiscal years ending December 31, 1995, 1996 and 1997 reveal that SBC's capital expenditures have exceeded depreciation and amortization each year since 1993.[175] In addition, the 1997 ARMIS reports for SWBT, PacBell and Nevada Bell show that the additions to TPIS (before amortizable assets) for the three companies totaled $4.95 billion while TPIS depreciation totaled only $4.05 billion.[176]

Profits to SBC Shareholders

The Michigan Consumer Federation alleges that money is diverted from the local exchange network to shareholders as dividends and as annual dividend payments to the parent

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[173] Edgemont Neighborhood Coalition at 6-7.

[174] Michigan Consumer Federation at 13-14.

[175] See SBC 10K for fiscal years ending December 31, 1995, December 31, 1996 and December 31 1997.

[176] See SWBT ARMIS USOA Report for year ending 12/31/97 at Tables B-1 and I-1; Nevada Bell ARMIS USOA Report for year ending 12/31/97 at Tables B-1-2 and I-1-3; Pacific Bell ARMIS USOA Report for year ending 12/31/97 at Tables B-1 and I-1.

corporation which are used to support unregulated subsidiaries. They suggest that these monies should be shared with local exchange customers in the form of lower rates or refunds.[177]

Response: The Michigan Consumer Federation is seeking a return to rate-of-return regulation of telephone rates. The issue is one that should be resolved in connection with state or FCC rate proceedings and not here. The FCC and most of the state regulators, including those in all of SBC's and Ameritech's states, have concluded that an incentive rate-based regulatory scheme will better serve the public interest than the historic rate-of-return.[178] Under price cap and similar incentive regimes, shareholders are rewarded for increased efficiency and productivity by retaining a larger portion of the resulting profits. SBC's retention of those profits is thus not a "diversion" of funds, but the intended result of the regulatory regime adopted by this Commission and by the state commissions with jurisdiction over SBC and Ameritech.

Base of Operations

The Consumer Coalition alleges that SBC "cleaned house in California" after the Telesis merger and will move Ameritech's operations to San Antonio resulting in a loss of jobs in Ameritech's regions.[179]

Response: While SBC consolidated certain functions after its merger with PacTel, SBC continues to maintain the headquarters of PacBell in California, and has made California SBC's headquarters for its Internet and international businesses.[180] Other managerial positions were also moved to California. In fact, since the merger, total California employment is up more than 2,200 employees. With regard to Ameritech, Mr. Edward E. Whitacre, Jr., Chairman of SBC, wrote a letter to Ameritech's chairman, Mr. Notebaert stating SBC's commitment to maintain Ameritech's corporate headquarters in Chicago and to insure that employment levels in Ameritech's five state region will not be reduced due to the merger.[181] It is also worth noting that SBC has an outstanding record on creating new, high-desirable jobs, which is undoubtedly why the Communications Workers of America strongly supports this merger.[182]

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[177] Michigan Consumer Federation at 13-14.

[178] See e.g., Southwestern Bell Telephone Co. v. AT&T Communications of the Southwest, No. A-97-CA-13255 at 19, 24 (filed Aug. 31, 1998).

[179] Consumer Coalition at 11.

[180] See Exhibit 10 to this Appendix (Letter from Edward E. Whitacre, Jr., Chairman and CEO of SBC to Philip Quigley, Chairman and CEO of Telesis (Apr. 1, 1996).

[181] See Exhibit 11 to this Appendix.

[182] Communications Workers of America at 6-10 ("The emphasis on job-growth and business expansion in the SBC/Ameritech merger contrasts vividly with so many other workers which focus on . . . firing workers.").

Attachment 1
To SBC's Response to
Specific Allegations

Letter from Donald J. Russell, Chief,
Telecommunications Task Force, Department of Justice,
to Liam S. Coonan,
Assistant General Counsel, SBC Communications Inc.
(March 6, 1998)

U. S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 6, 1998

Liam S. Coonan, Esq.
Senior Vice President and
Assistant General Counsel
SBC Communications, Inc.
175 E. Houston Street
San Antonio, Texas 78205

Re: SBC Performance Measures

Dear Mr. Coonan:

As part of the Department's commitment to work with all Bell companies on relevant issues in advance of their section 271 applications, the Department of Justice and SBC Communications, Inc. ("SBC") have, as you know, been spending considerable time discussing issues relating to wholesale support processes and performance measures. In that regard, you have provided us with a draft list of proposed performance measures, a list that you have supplemented as our discussions have progressed.

Attachment A is a comprehensive list of performance measures. With the qualifications set forth below, we are satisfied that the performance measures listed in Attachment A, to which SBC has agreed,[1] would be sufficient, if properly implemented, to satisfy the Department's need for performance measures for evaluating a Section 271 application filed in the not-too-distant future.

We appreciate SBC's engagement with the Department on satisfying our competitive assessment in advance of a filing and look forward to working with you on additional related issues. One such issue is whether the performance measures in Attachment A have been "properly implemented," since the majority of our discussions have dealt with the performance measures themselves and since it is upon the actual measures that this letter focuses. As you can appreciate, there are important repercussions that may arise from how the measures are implemented. For example, definitional issues and other details connected with the measures themselves (such as

[1] As we have discussed with you, the Department has agreed to narrow variances from Attachment A in light of certain SBC processes and procedures. Specifically, we have agreed that SBC need not provide separate operator services and directory assistance speed-of-answer measurements for branded and unbranded calls and that SBC can limit its 911 measurements to an error-clearing interval measure that is presently under development.

the basis upon which due dates and start and stop times are set in particular measures) could significantly affect the meaning of the data. Thus, because we have not yet reached agreement on issues such as data retention, presentation, and reporting (*e.g.*, disaggregation, reporting intervals and formats), and analysis, we expect that Department staff and SBC will continue to work towards resolution of these issues. We also expect that Department staff and SBC will discuss performance standards and benchmarking, other important aspects of the Department's performance analysis.

Moreover, while we are satisfied at the present time that the measures set out in Attachment A would, if properly implemented, suffice for present purposes, performance measurement is a dynamic area and future developments could necessitate changes in our views of appropriate performance measures. For example, while the measures listed in Attachment A are structured to cover the provision of unbundled network elements, once it becomes clear how unbundled network elements will be provided so as to allow requesting carriers to combine such elements in order to provide a telecommunications service, we may find that other measures are necessary to assess performance in this situation. In addition, the development of new services or new methods of providing existing services could necessitate additional performance measures. Alternatively, through ongoing regulatory proceedings, our own investigation, or otherwise, we might learn of additional risks, and even occurrences, of discrimination of which we were not previously aware. Accordingly, we would expect SBC to implement additional measures or modifications to existing measures should it become apparent to the Department that they are necessary. On the other hand, developments might reveal that certain measures were no longer necessary and could be eliminated.

Our satisfaction with the performance measures set out in Attachment A must be placed in its proper context. First, it is limited to the Department's application of its competitive standard. Under section 271, the Department is to evaluate applications for Bell entry using "any standard" the Department believes is appropriate, and the FCC is required to give "substantial weight" to that evaluation. As we have explained, our standard, in addition to the specific statutory prerequisites, requires a demonstration that local markets in a state have been "fully and irreversibly opened to competition," and appropriate performance measures, standards, and benchmarks are important to the Department's application of our competitive standard.

Second, our conclusions relate only to the Department's evaluation of section 271 applications and should not be construed as an expression of the Department's views concerning the appropriate resolution of any federal or state regulatory proceeding relating to performance measures. The FCC and some state commissions have ongoing proceedings considering both performance measures and performance standards, including company-specific and state-specific issues. These proceedings may produce performance measures different from, or in addition to, those described in Attachment A.

I am hopeful that we can resolve the remaining issues expeditiously through our ongoing discussions. I appreciate your cooperation in addressing these issues and look

forward to our continuing mutual efforts. If you have any questions or suggestions regarding these issues, please call.

Sincerely,

Donald J. Russell
Chief
Telecommunications Task Force

PERFORMANCE MEASURES

I. PRE-ORDERING

1. *Pre-order OSS Availability*: Measures both the hours and days the BOC's pre-order OSSs are available to CLECs and non-scheduled downtime.

2. *Pre-order System Response Times*: Measures, in seconds, the speed with which the CLEC Service Representatives receive information (including rejection and error messages) for processes described below with a customer on the line. These cycle-time measures assume the CLEC has mechanical access to the BOC databases and should be measured in a manner that allows appropriate comparisons to like cycle times experienced by BOC retail service representatives. Times are provided separately for the following functions:

   a. Address verification

   b. Request for telephone number

   c. Request for customer service record (CSR)

   d. Service and product availability

   e. Appointment scheduling

II. ORDERING

1. *Firm Order Commitment (FOC) Cycle Time*: Measures the average time from CLEC service order submission to BOC response, confirming receipt of a properly formatted and appointed order and committing to complete the order by a specified date. In addition, may be presented as the percentage returned within an agreed upon interval.

2. *Rejected Order Cycle Time*: Measures the average time, from CLEC service order submission to BOC response, for rejecting an incomplete service order or one containing errors. Each submission of an order, up to and including the FOC, requires a response cycle-time result.

3. *Ordering Quality*: The following performance measures are important determinants of service order processing parity or adequacy. Each is important in its own right and provides insights into different aspects of order quality. While the entire set would not be required, Percent Flow Through and either Percent Rejected Orders or Order Submissions per Order are necessary.

   a. *Percent Rejected Orders*: Measured at the BOC gateway, it is the result of dividing rejected orders by total orders submitted, manually or mechanically. It is an adequacy measure because there are no equivalent BOC analogs. BOC orders are "rejected" via automatic edits before the order leaves the service representative position.

   b. *Order Submissions per Order*: Measured at the BOC gateway, it is determined by dividing total order submissions by the number of orders receiving a firm order commitment.

c. *Percent Flow Through*: Measures the percentage of orders that flow from the BOC gateway to acceptance by the BOC service order processor without manual intervention. Orders rejected at the gateway are excluded.

4. *Ordering OSS Availability*: Measures both the hours and days the BOC's ordering OSSs are available to CLECs and non-scheduled downtime.

5. *Ordering Center Availability*: Reports both the hours and days of operation of the BOC ordering center.

6. *Speed of Answer–Ordering Center*: Measures the average time to reach a BOC service representative.

III. PROVISIONING

A. *Service Provisioning Interval*: Measures the time from customer request for service to completion when the appointment is offered by the BOC, either from a common appointment database, generally used in a resale environment, or by agreed-to appointment intervals, more commonly used in a UNE environment. Service Provisioning Interval should be measured both as a mean, or average interval, and as a percent over a standard interval. Next available appointments offered from the work schedule OSS and expedited requests should be included for measurement; customer-requested due dates longer than the offered appointment should be excluded.

1. *Average Service Provisioning Interval*: Measured in days from end-user request to order completion and counted separately for dispatched and non-dispatched orders.

2. *Percent Service Provisioned Out of Interval*: Measures the percentage of service orders completed in more than an agreed upon number of days. Ideally, measured incrementally by day. For example, orders completed in more than 3 days, 4 days, 5 days, and 6 days. This performance measure depicts the tail of the interval curve. Combined with the Average Installation Interval, portrays a robust picture of provisioning cycle time.

B. Other Provisioning Measures

1. *Percent Interconnection Facilities Provisioned Out of Interval*: Measures the percentage of interconnection facilities (switched trunks and dedicated circuits) provisioned in more than an agreed upon number of days.

2. *Percent Missed Appointments–Company Reasons*: Order completion is measured against the *original CLEC-requested due date*. No due date changes may be made unless explicitly specified by the end user or explicitly agreed to by the CLEC and the BOC. Orders missed for company reasons–load, facilities, or other–are included. Orders missed due to customer reasons are not counted as a miss for purposes of this measure.

3. *Percent New Service Failures*: Measures the number of trouble reports on newly provisioned service within an agreed number of days of the original trouble. Studies have shown high correlation between provisioning errors and trouble reports occurring within 10 days and lower correlations beyond 10 days.

4. *Completed Service Order Accuracy*: Measures the extent to which orders are completed by the BOC as ordered by the CLEC.

5. *Orders Held for Facilities*: Measures service orders not completed by the original due date because of a lack of network facilities (including loops and central office equipment) in terms of (a) the average time between the original due date and the final completion date, and (b) the number of pending orders, as of the report date, held beyond a specified period (usually 30 days) following the original due date.

6. *Average Completion Notice Interval*: Measures the average time from order completion to notification of the CLEC for orders submitted on a mechanized basis.

IV. MAINTENANCE

A. Trouble Reporting & Clearance

1. *Trouble Report Rate*: Measured as the number of trouble reports per customer or access line per month.

2. *Percent Repeat Reports*: Measured as the percentage of end-user troubles on the same access line within an agreed number of days of the original trouble. Studies have shown high correlation between repair errors and repeat reports occurring within 10 days and lower correlations beyond 10 days.

3. *Percent Out of Service Over 24 Hours*: Measured as a percentage of out-of-service troubles cleared within 24 hours.

4. *Percent Missed Appointments*: Measures the percentage of trouble reports cleared after the promised appointment. Requires that appointment times, once set, cannot be changed except by the end user.

5. *Mean Time to Repair*: Measured as the average interval from trouble report to clearance.

6. *Interconnection Facilities Restored Out of Interval*: Measures the percentage of interconnection facilities (switched trunks and dedicated circuits) reported out of service and restored after an agreed-to interval. May also be measured and reported as an average interval.

7. *Maintenance OSS Availability*: Measures both the hours and days the BOC's maintenance OSSs are available to CLECs and non-scheduled downtime.

8. *Maintenance Center Speed of Answer*: Measures the average time to reach a BOC repair service representative.

B. Network Quality

1. *Percent Blocked Calls*: Measures trunking grade (quality) of service. Should be provided separately for the following types of trunks:

   a. ILEC End Office to CLEC End Office Trunk Groups

   b. ILEC Tandem to CLEC End Office Trunk Groups

   c. ILEC Tandem to and from ILEC End Office Trunk Groups

V. BILLING

1. *Bill Timeliness*: Measures the percentage of billing records delivered within an agreed-to interval. Should be provided for the following billing information provided to CLECs:

   a. Daily Usage File (DUF): Measures, from message creation to the availability of the usage information to the CLEC, the percentage of DUF's provided within the interval.

   b. Wholesale Bill: Measures the percentage of wholesale bills issued within an agreed-to number of days following the end of the billing cycle.

2. *Bill Completeness*: Measures the percentage of complete billing records for usage charges, recurring charges, and non-recurring charges provided to CLECs. Should be measured after bills are released. Under approved conditions, sufficiently robust pre-release test and audit procedures could substitute for a post-release audit.

   a. Usage: Measures unbillable usage and usage from the current bill cycle not included on the current wholesale bill.

   b. Recurring Charges: Measures current bill cycle recurring charges not included on the current wholesale bill.

   c. Non-Recurring Charges: Measures non-recurring charges completed in the current bill period not included on the current wholesale bill.

3. *Bill Accuracy*: Measures the percentage of accurate billing records for usage charges, recurring charges, and non-recurring charges provided to CLECs. Should be measured after bills are released. Under approved conditions, sufficiently robust pre-release test and audit procedures could substitute for a post-release audit.

VI. OTHER

1. *Operator Services Toll Speed of Answer*: Measures raw interval in seconds or as a percentage under a set objective. Should be provided separately for unbranded and branded service.

2. *Directory Assistance Speed of Answer*: Measures raw interval in seconds or as a percentage under a set objective. Should be provided separately for unbranded and branded service.

3. *911 Database Update Timeliness and Accuracy*: Measures the percentage of missed due dates of 911 database updates and the percentage of accurate updates.